

Exhibit 11

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No. 10 Civ. 9308 (JSR)

-----x

BURTON T. FRIED,

Plaintiff,

- against -

LVI SERVICES, INC., LVI PARENT CORP., CODE
HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE
EQUITY V LP; APOLLO INVESTMENT CORP.,
SCOTT E. STATE, in his official and
individual capacities; BRIAN SIMMONS, in
his official and individual capacities;
RAJAY BAGARIA, in his official and
individual capacities; GERALD J. GIRARDI,
in his official and individual capacities,
Defendants.

-----x

May 26, 2011

10:03 a.m.

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212-267-6868

516-608-2400

<p>1 2 3 4 VIDEOTAPE DEPOSITION of SCOTT 5 STATE, taken by the Plaintiff, pursuant to 6 Notice, held at the offices of Thompson 7 Wigdor & Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 4 1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3 1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 MATTHEW GORMAN, ESQ. 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5 1 2 THE VIDEOGRAPHER: Good 10:09:27 3 morning. My name is J.D. Martinez of 10:09:27 4 Veritext New York. The date today is May 10:09:29 5 26, 2011, and the time is approximately 10:09:31 6 10:09 a.m. This deposition is being held 10:09:34 7 in the office of Thompson Wigdor & Gilly 10:09:38 8 LLP located at 85 Fifth Avenue, New York, 10:09:41 9 New York. The caption of this case is 10:09:45 10 Burton T. Fried versus LVI Services, Inc., 10:09:47 11 et al. filed in the United States District 10:09:51 12 Court, Southern District of New York. The 10:09:53 13 name of the witness is Scott State, and at 10:09:56 14 this time the attorneys will identify 10:09:58 15 themselves and the parties they represent 10:09:59 16 after which our court reporter, Debbie 10:10:01 17 Zaromatidis, will swear in the witness, 10:10:05 18 and we can proceed. 10:10:05 19 MS. SELTZER: Joanne Seltzer 10:10:08 20 with Sidley Austin for all of the 10:10:09 21 defendants. 10:10:11 22 MR. DATOO: Shaffin Dattoo with 10:10:12 23 Thompson Wigdor & Gilly representing the 10:10:14 24 plaintiff Burton Fried. 10:10:16 25</p>

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<p>6</p> <p>1</p> <p>2 SCOTT STATE, 10:10:17</p> <p>3 having first been duly sworn by a Notary 10:10:17</p> <p>4 Public of the State of New York, was 10:10:17</p> <p>5 examined and testified as follows: 10:10:17</p> <p>6 EXAMINATION BY MR. DATOO: 10:10:25</p> <p>7 Q. Good morning, Mr. State. 10:10:25</p> <p>8 A. Who is this gentleman? 10:10:26</p> <p>9 Q. I am just about to introduce him 10:10:28</p> <p>10 to you. As you know, my name is Shaffin 10:10:30</p> <p>11 Datoo. To my left is my colleague Matthew 10:10:32</p> <p>12 Gorman. To his left, as you know, is Mr. 10:10:35</p> <p>13 Burt Fried. 10:10:38</p> <p>14 A. Right. 10:10:38</p> <p>15 Q. Is your ability to tell the 10:10:39</p> <p>16 truth in any way impaired today? 10:10:41</p> <p>17 A. No. 10:10:43</p> <p>18 Q. Do you understand that the 10:10:43</p> <p>19 answers you are about to give are under 10:10:45</p> <p>20 oath and that you are subject to penalties 10:10:47</p> <p>21 of perjury if you give an untruthful 10:10:50</p> <p>22 answer? 10:10:52</p> <p>23 A. Yes. 10:10:52</p> <p>24 Q. I am going to assume that if you 10:10:53</p> <p>25 answer a question that you understood it. 10:10:55</p>	<p>8</p> <p>1 STATE</p> <p>2 account? 10:11:37</p> <p>3 A. Yes. 10:11:37</p> <p>4 Q. And did you review any e-mails 10:11:38</p> <p>5 in your personal e-mail account? 10:11:40</p> <p>6 A. Yes. 10:11:42</p> <p>7 Q. And did you provide any 10:11:42</p> <p>8 responsive e-mails in your personal e-mail 10:11:44</p> <p>9 account to your attorney? 10:11:47</p> <p>10 A. Yes. 10:11:47</p> <p>11 Q. And do you keep any work-related 10:11:49</p> <p>12 documents at home? 10:11:50</p> <p>13 A. Very few but, yes, some. 10:11:51</p> <p>14 Q. And did you look through those 10:11:53</p> <p>15 documents to see if there are any 10:11:54</p> <p>16 responsive documents? 10:11:55</p> <p>17 A. Yes. 10:11:56</p> <p>18 Q. And did you provide those to 10:11:56</p> <p>19 your attorneys if there were any? 10:11:57</p> <p>20 A. Yes. 10:11:58</p> <p>21 Q. Have you ever been sued before? 10:11:59</p> <p>22 A. Yes. 10:12:02</p> <p>23 Q. How many times? 10:12:03</p> <p>24 A. Once. 10:12:04</p> <p>25 Q. And what was -- 10:12:05</p>
<p>7</p> <p>1 STATE</p> <p>2 If you don't understand a question, let me 10:10:57</p> <p>3 know, and I will ask the question in a 10:10:59</p> <p>4 different way. 10:11:00</p> <p>5 A. Okay. 10:11:01</p> <p>6 Q. Please give verbal answers to my 10:11:02</p> <p>7 questions. Don't nod your head or shake 10:11:04</p> <p>8 it. Otherwise, the court reporter won't 10:11:06</p> <p>9 be able to take it down, and please let me 10:11:08</p> <p>10 finish asking my question before you start 10:11:11</p> <p>11 answering it Or the court reporter won't 10:11:13</p> <p>12 be able to take it down. 10:11:15</p> <p>13 A. Okay. 10:11:16</p> <p>14 Q. If you need a break, let me 10:11:17</p> <p>15 know. The only condition I have is that 10:11:19</p> <p>16 you answer the last question asked. 10:11:20</p> <p>17 A. Okay. 10:11:22</p> <p>18 Q. In connection with this lawsuit, 10:11:23</p> <p>19 did you provide your attorney with all 10:11:25</p> <p>20 responsive documents? 10:11:27</p> <p>21 A. Yes. 10:11:27</p> <p>22 Q. And where did you look to find 10:11:28</p> <p>23 these documents? 10:11:30</p> <p>24 A. Computers, hard files, office. 10:11:31</p> <p>25 Q. Do you have a personal e-mail 10:11:35</p>	<p>9</p> <p>1 STATE</p> <p>2 A. I'm sorry. Twice. 10:12:08</p> <p>3 Q. And when was the first one? 10:12:10</p> <p>4 A. About 2003. 10:12:15</p> <p>5 Q. And what was the nature of that 10:12:17</p> <p>6 lawsuit? 10:12:18</p> <p>7 A. It was as a director of a 10:12:18</p> <p>8 foreign subsidiary of a company that I 10:12:21</p> <p>9 used to run, and it was in Australia, and 10:12:23</p> <p>10 under Australian law directors could be 10:12:27</p> <p>11 sued personally for issues associated with 10:12:31</p> <p>12 companies. 10:12:35</p> <p>13 Q. Okay. And what was -- what were 10:12:36</p> <p>14 the allegations in the lawsuit? 10:12:38</p> <p>15 A. The company had taken a loan 10:12:40</p> <p>16 from another party, and the loan had not 10:12:43</p> <p>17 been properly repaid. The third party 10:12:47</p> <p>18 sued the company I believe and all the 10:12:52</p> <p>19 directors. 10:12:54</p> <p>20 Q. And how did that lawsuit end? 10:12:55</p> <p>21 A. That lawsuit went on for eight 10:12:58</p> <p>22 or nine years. It was resolved last 10:13:02</p> <p>23 February. It settled out of court between 10:13:04</p> <p>24 the company and the other party. I -- I 10:13:08</p> <p>25 had nothing really to do with the 10:13:12</p>

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<p style="text-align: right;">90</p> <p>1 STATE</p> <p>2 interim CEO? 11:39:14</p> <p>3 A. I would assume shortly after Mr. 11:39:15</p> <p>4 McNamara left. 11:39:17</p> <p>5 Q. Do you know why Mr. McNamara 11:39:19</p> <p>6 left? 11:39:21</p> <p>7 A. I do not. 11:39:21</p> <p>8 Q. And do you know why Mr. Fried 11:39:22</p> <p>9 became interim CEO? 11:39:25</p> <p>10 A. I think it is because Mr. 11:39:27</p> <p>11 McNamara left. 11:39:28</p> <p>12 Q. And do you know if someone asked 11:39:30</p> <p>13 him to become interim CEO? 11:39:31</p> <p>14 A. I do not. 11:39:34</p> <p>15 Q. Do you know how he became the 11:39:35</p> <p>16 interim CEO? 11:39:39</p> <p>17 A. No. 11:39:40</p> <p>18 MS. SELTZER: Objection to the 11:39:42</p> <p>19 form. 11:39:43</p> <p>20 Q. Okay. Do you know what job 11:39:44</p> <p>21 duties Mr. Fried assumed when he became 11:39:47</p> <p>22 interim CEO? 11:39:50</p> <p>23 A. No. 11:39:51</p> <p>24 Q. Do you know if he kept his prior 11:39:55</p> <p>25 job duties while he was interim CEO? 11:39:57</p>	<p style="text-align: right;">92</p> <p>1 STATE</p> <p>2 marked as Plaintiff's Exhibit 17. 11:41:02</p> <p>3 A. Yes. 11:41:04</p> <p>4 Q. Can you review the document and 11:41:04</p> <p>5 let me know if you have ever seen it 11:41:05</p> <p>6 before? 11:41:07</p> <p>7 A. I -- I know that I've seen the 11:41:08</p> <p>8 text. I don't know that I've seen this 11:41:10</p> <p>9 exact piece of paper before. 11:41:13</p> <p>10 Q. Okay. Did you approve 11:41:14</p> <p>11 this -- the text of this document before 11:41:20</p> <p>12 it was issued? 11:41:21</p> <p>13 A. I -- I don't -- I don't know 11:41:22</p> <p>14 that I would say I approved it. I 11:41:23</p> <p>15 am -- I'm not a hundred percent sure. I 11:41:27</p> <p>16 believe this was issued before I was an 11:41:29</p> <p>17 employee of the company, so on that basis 11:41:31</p> <p>18 I'm not sure I could technically approve 11:41:34</p> <p>19 it. 11:41:36</p> <p>20 Q. I am handing you a document that 11:41:37</p> <p>21 we -- 11:41:53</p> <p>22 (Plaintiff's Exhibit 22 marked 11:41:53</p> <p>23 for identification.) 11:41:56</p> <p>24 (Document handed to witness.) 11:41:56</p> <p>25 Q. Mr. State, you have in front of 11:41:56</p>
<p style="text-align: right;">91</p> <p>1 STATE</p> <p>2 A. I do not. 11:40:01</p> <p>3 Q. While Mr. Fried was interim CEO, 11:40:02</p> <p>4 do you have any personal knowledge of his 11:40:06</p> <p>5 work performance? 11:40:07</p> <p>6 A. I do not. 11:40:08</p> <p>7 Q. And did there come a time when 11:40:09</p> <p>8 you were hired as CEO? 11:40:20</p> <p>9 A. Pardon me? 11:40:21</p> <p>10 Q. Did there come a time when you 11:40:22</p> <p>11 were hired as CEO? 11:40:24</p> <p>12 A. Yes. 11:40:25</p> <p>13 Q. And -- we have to do this to 11:40:25</p> <p>14 make the record clear. 11:40:27</p> <p>15 A. Okay. 11:40:28</p> <p>16 Q. When was that? 11:40:29</p> <p>17 A. Approximately September 28. You 11:40:29</p> <p>18 know, if you can confirm the date, we can 11:40:35</p> <p>19 establish the 28th. I think -- I think 11:40:37</p> <p>20 that is the date. I am not a hundred 11:40:39</p> <p>21 percent sure. 11:40:41</p> <p>22 Q. Okay. 11:40:41</p> <p>23 (Document handed to witness.) 11:40:57</p> <p>24 Q. Mr. State, you have in front of 11:40:58</p> <p>25 you a document that has been previously 11:41:00</p>	<p style="text-align: right;">93</p> <p>1 STATE</p> <p>2 you a document that has been marked 11:41:58</p> <p>3 Plaintiff's Exhibit 22. 11:41:59</p> <p>4 A. Okay. 11:42:01</p> <p>5 Q. Can you please -- 11:42:01</p> <p>6 A. Yes, I remember this. 11:42:02</p> <p>7 Q. Okay. 11:42:04</p> <p>8 A. Okay. So I approved the 11:42:10</p> <p>9 contents of this release. I wouldn't say 11:42:12</p> <p>10 I approved the release because I couldn't. 11:42:14</p> <p>11 I wasn't a member of the company, but I 11:42:16</p> <p>12 gave some information, which I believe the 11:42:18</p> <p>13 age went in there. I don't know that 11:42:22</p> <p>14 the -- where this came from in here. 11:42:27</p> <p>15 Q. Do you know why the release 11:42:29</p> <p>16 refers to your age? 11:42:32</p> <p>17 A. No idea. 11:42:33</p> <p>18 Q. Do you know why the release 11:42:35</p> <p>19 doesn't refer to Mr. Fried's age? 11:42:36</p> <p>20 A. No. Do you have an earlier 11:42:38</p> <p>21 draft of this by chance? 11:42:45</p> <p>22 Q. I don't think so. 11:42:48</p> <p>23 A. This says that there was -- 11:42:51</p> <p>24 there was an attached file in this e-mail. 11:42:53</p> <p>25 I am just curious -- you asked why age was 11:42:56</p>

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<p style="text-align: right;">114</p> <p>1 STATE</p> <p>2 MS. SELTZER: I object to form. 12:02:34</p> <p>3 A. I believe at some point I 12:02:35</p> <p>4 concluded that -- that he was never going 12:02:36</p> <p>5 to retire. And can we back up just a 12:02:38</p> <p>6 little bit? 12:02:41</p> <p>7 Q. Sure. 12:02:41</p> <p>8 A. At the time I took the job, I 12:02:42</p> <p>9 was not aware that Mr. Fried was even an 12:02:45</p> <p>10 employee of the company in his role as 12:02:47</p> <p>11 chairman. I had understood in his role as 12:02:49</p> <p>12 CEO or interim CEO he was an employee, but 12:02:52</p> <p>13 I didn't even know that in his chairman 12:02:55</p> <p>14 role under McNamara he had been an 12:03:00</p> <p>15 employee. It -- and through no one's 12:03:02</p> <p>16 fault I just was not aware of that. 12:03:07</p> <p>17 Q. Okay. And you -- you mentioned 12:03:09</p> <p>18 that you had a discussion with Brian 12:03:11</p> <p>19 Simmons regarding Mr. Fried's -- regarding 12:03:14</p> <p>20 Mr. Fried. 12:03:24</p> <p>21 A. Yes. 12:03:25</p> <p>22 Q. And do you recall when that 12:03:25</p> <p>23 discussion was? 12:03:27</p> <p>24 A. I believe that discussion 12:03:27</p> <p>25 occurred shortly before the conversation I 12:03:33</p>	<p style="text-align: right;">116</p> <p>1 STATE</p> <p>2 you've seen it before. 12:04:55</p> <p>3 (Document handed to witness.) 12:05:03</p> <p>4 A. I -- I recognize the -- I 12:05:03</p> <p>5 haven't seen -- I don't believe I've seen 12:05:06</p> <p>6 this document because it is -- it looks 12:05:08</p> <p>7 like it is from Hogan to Simmons, but the 12:05:10</p> <p>8 substance of the document from myself to 12:05:13</p> <p>9 Hogan, yes. 12:05:15</p> <p>10 Q. Now, let me direct your 12:05:16</p> <p>11 attention to the second page. 12:05:23</p> <p>12 A. Okay. 12:05:26</p> <p>13 Q. The fourth paragraph. Do you 12:05:26</p> <p>14 see the first sentence? It reads: "In the 12:05:33</p> <p>15 best case scenario Burt will decide to 12:05:36</p> <p>16 retire at some date certain from LVI upon 12:05:38</p> <p>17 a new CEO being named and offer to support 12:05:41</p> <p>18 the business under a consulting agreement 12:05:44</p> <p>19 in any way the new CEO sees fit." 12:05:46</p> <p>20 Do you see that? 12:05:50</p> <p>21 A. Yes. 12:05:50</p> <p>22 Q. And when you wrote this e-mail, 12:05:51</p> <p>23 it was before you were hired by LVI, 12:05:53</p> <p>24 correct? 12:05:58</p> <p>25 A. I believe -- what is the date on 12:05:58</p>
<p style="text-align: right;">115</p> <p>1 STATE</p> <p>2 had with Mr. Fried about his duties. 12:03:36</p> <p>3 Somewhere in that call it one-week time 12:03:39</p> <p>4 frame. 12:03:43</p> <p>5 Q. And do you know why Mr. Simmons 12:03:44</p> <p>6 had the impression that Mr. Fried wanted 12:03:45</p> <p>7 to retire? 12:03:47</p> <p>8 A. It was my understanding they had 12:03:48</p> <p>9 had a conversation to that effect. 12:03:53</p> <p>10 Q. Did Mr. Simmons tell you that? 12:03:56</p> <p>11 A. I -- I believe so. I am not a 12:03:58</p> <p>12 hundred percent positive, but I believe 12:04:04</p> <p>13 those were his words. 12:04:06</p> <p>14 Q. And do you -- did you document 12:04:07</p> <p>15 that conversation with Mr. Simmons? 12:04:09</p> <p>16 A. No. 12:04:11</p> <p>17 Q. Is it your practice to document 12:04:12</p> <p>18 conversations you have with other people? 12:04:15</p> <p>19 A. Very seldom. 12:04:17</p> <p>20 Q. Okay. 12:04:18</p> <p>21 (Document handed to witness.) 12:04:18</p> <p>22 Q. Mr. State, I am handing you a 12:04:47</p> <p>23 document that has been previously marked 12:04:49</p> <p>24 as Plaintiff's Exhibit 10. Please take a 12:04:51</p> <p>25 look at the document and let me know if 12:04:53</p>	<p style="text-align: right;">117</p> <p>1 STATE</p> <p>2 it? It was written on September 19. 12:06:01</p> <p>3 Q. Was that before you got an offer 12:06:07</p> <p>4 for employment? 12:06:10</p> <p>5 A. I don't think so. No, it 12:06:11</p> <p>6 couldn't have been because this e-mail 12:06:14</p> <p>7 from me is specifically about the offer of 12:06:16</p> <p>8 employment. Notice on -- it is called 12:06:19</p> <p>9 regarding offer was the title of the 12:06:24</p> <p>10 e-mail. 12:06:26</p> <p>11 Q. Is this before you accepted the 12:06:26</p> <p>12 offer? 12:06:28</p> <p>13 A. I believe so. 12:06:29</p> <p>14 Q. Okay. Now, what did you mean by 12:06:30</p> <p>15 that first sentence in paragraph 4 on page 12:06:35</p> <p>16 2? 12:06:39</p> <p>17 A. I -- I believe, you know, what I 12:06:39</p> <p>18 was thinking about at the time is that 12:06:44</p> <p>19 rather than have uncertainty about when 12:06:47</p> <p>20 Burt was going to retire we would 12:06:49</p> <p>21 basically come to some conclusion right up 12:06:52</p> <p>22 front about the date, you know, having 12:06:54</p> <p>23 believed that that was his intention. It 12:06:56</p> <p>24 didn't make sense to me to leave that 12:06:59</p> <p>25 loose end out there where everyone would 12:07:02</p>

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<p>1 STATE</p> <p>2 wonder when that was going to happen. 12:07:05</p> <p>3 Q. What did you mean by the best 12:07:08</p> <p>4 case scenario? 12:07:10</p> <p>5 A. As -- you know, as an alternate 12:07:12</p> <p>6 to not -- not saying okay here is my plan. 12:07:15</p> <p>7 I just felt like it was good for everybody 12:07:18</p> <p>8 to be above board and say here is what we 12:07:21</p> <p>9 are going to do. The alternate case is it 12:07:24</p> <p>10 would be mysterious to everybody, and no 12:07:27</p> <p>11 one would know what was going to happen. 12:07:30</p> <p>12 Q. Did you expect him to retire? 12:07:33</p> <p>13 A. I thought he wanted to. 12:07:36</p> <p>14 Q. But you never asked him 12:07:37</p> <p>15 directly? 12:07:39</p> <p>16 MS. SELTZER: Objection. 12:07:39</p> <p>17 A. I don't know. I mean I -- I 12:07:40</p> <p>18 just -- there were so many signs that I 12:07:42</p> <p>19 perceived anyway from him that that was 12:07:45</p> <p>20 his intention. I'm not sure that I ever 12:07:47</p> <p>21 said so you want to retire. I -- I don't 12:07:49</p> <p>22 recall doing that. 12:07:52</p> <p>23 Q. What signs did you -- did he 12:07:53</p> <p>24 give you? 12:07:54</p> <p>25 A. The discussion -- 12:07:55</p>	<p>1 STATE</p> <p>2 employee of the company. So retirement to 12:08:48</p> <p>3 me, you know, meant he was essentially 12:08:52</p> <p>4 going to step away from the business, as I 12:08:55</p> <p>5 had been told was his intention all along, 12:08:57</p> <p>6 and as chairman of the board it wasn't 12:09:01</p> <p>7 really in my purview to be making those 12:09:04</p> <p>8 kinds of decisions. He didn't work for 12:09:08</p> <p>9 me. I didn't know he was an employee of 12:09:10</p> <p>10 the company, and as an employee of the 12:09:12</p> <p>11 company I still to this day don't know who 12:09:13</p> <p>12 he would have worked for. It became very 12:09:17</p> <p>13 confusing when I discovered he was an 12:09:20</p> <p>14 employee. 12:09:22</p> <p>15 Q. Now, was there any problem with 12:09:23</p> <p>16 Mr. Fried not retiring? 12:09:26</p> <p>17 A. I -- I am sorry. I don't follow 12:09:27</p> <p>18 what -- what do you mean by problem? 12:09:31</p> <p>19 Q. You -- you mentioned -- you 12:09:34</p> <p>20 testified earlier that there was a lot of 12:09:36</p> <p>21 uncertainty regarding if Mr. Fried was 12:09:37</p> <p>22 going to retire. Why was that such a big 12:09:40</p> <p>23 deal? 12:09:43</p> <p>24 A. I think it was a distraction to 12:09:43</p> <p>25 a lot of people to not know who is in 12:09:46</p>
119	121
<p>1 STATE</p> <p>2 MS. SELTZER: Objection. 12:07:56</p> <p>3 A. -- that I have -- I've laid out 12:07:57</p> <p>4 for you. The -- you know, the -- the 12:07:59</p> <p>5 statement that he is 71, and he doesn't 12:08:02</p> <p>6 want to do this any more, which, you know, 12:08:04</p> <p>7 later in the meeting I had with him he 12:08:06</p> <p>8 corrected me and said he was 70 and 12:08:07</p> <p>9 laughed about it, the statement about I 12:08:09</p> <p>10 should be going through -- out through the 12:08:11</p> <p>11 back door instead of in through the front 12:08:14</p> <p>12 door. There were, you know, enough of 12:08:16</p> <p>13 these things that it -- it just appeared 12:08:18</p> <p>14 to me that was the intention. So it 12:08:20</p> <p>15 wouldn't have struck me to say tell me 12:08:23</p> <p>16 exactly, you know, you want to retire. I 12:08:27</p> <p>17 wasn't -- it never even crossed my mind. 12:08:29</p> <p>18 Q. Did you ever talk to him and ask 12:08:32</p> <p>19 him when do you expect to retire? 12:08:33</p> <p>20 A. No, I -- this -- this e-mail 12:08:35</p> <p>21 right here clearly says, you know, we 12:08:37</p> <p>22 would have -- under the best case scenario 12:08:39</p> <p>23 we would -- we could come to that 12:08:41</p> <p>24 conclusion. Now, remember, at this point 12:08:43</p> <p>25 in time I didn't even know Burt was an 12:08:45</p>	<p>1 STATE</p> <p>2 charge and who is doing what and, you 12:09:49</p> <p>3 know, as I said when I -- when I 12:09:52</p> <p>4 discovered that Mr. Fried was an employee 12:09:54</p> <p>5 it sealed -- there seemed to be a great 12:09:56</p> <p>6 deal of ambiguity as to what that meant 12:09:58</p> <p>7 because every other employee of the 12:10:01</p> <p>8 company worked for me, and he didn't. 12:10:03</p> <p>9 Q. He didn't report to you? 12:10:06</p> <p>10 A. No. 12:10:07</p> <p>11 Q. How do you know that? 12:10:09</p> <p>12 A. I have an org chart that -- I 12:10:10</p> <p>13 don't think he reported to McNamara. I 12:10:14</p> <p>14 don't know who he reported to. 12:10:16</p> <p>15 Q. What did it say on the org 12:10:17</p> <p>16 chart? 12:10:22</p> <p>17 A. He is not on there. 12:10:22</p> <p>18 Q. Did you ever ask him who he 12:10:30</p> <p>19 reports today? 12:10:32</p> <p>20 A. No, I -- I don't recall ever 12:10:32</p> <p>21 asking him. 12:10:34</p> <p>22 Q. Did you ever ask anybody who he 12:10:35</p> <p>23 reported to? 12:10:38</p> <p>24 A. I think when I found out he was 12:10:39</p> <p>25 an employee I asked one of the investors. 12:10:40</p>

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<p style="text-align: right;">130</p> <p>1 STATE</p> <p>2 Q. Okay. So there are people that 12:16:54</p> <p>3 have the job duties that Mr. Fried said he 12:16:57</p> <p>4 had at LVI that report to other people at 12:17:00</p> <p>5 LVI, correct? 12:17:04</p> <p>6 A. I believe that is correct. 12:17:05</p> <p>7 Q. Okay. Now, in that paragraph, 12:17:08</p> <p>8 staying with the fourth paragraph in 12:17:29</p> <p>9 the -- in the third sentence you 12:17:31</p> <p>10 write -- actually in the second sentence 12:17:33</p> <p>11 it reads: "Several members of the senior 12:17:34</p> <p>12 team have told me that Burt will never 12:17:36</p> <p>13 retire because he has no other interests 12:17:38</p> <p>14 and nothing else to do." 12:17:40</p> <p>15 Who are you referring to from 12:17:42</p> <p>16 the senior team? 12:17:44</p> <p>17 A. I believe John Leonard had told 12:17:45</p> <p>18 me that, and -- you know, I'm not sure 12:17:49</p> <p>19 that I -- I think what John had told me 12:17:57</p> <p>20 was that -- he had told me that, and he 12:18:00</p> <p>21 said everybody believes this or something 12:18:02</p> <p>22 to that effect. I didn't like go poll the 12:18:04</p> <p>23 group and say what do you think. That 12:18:07</p> <p>24 was, you know, not what I was interested 12:18:09</p> <p>25 in. 12:18:11</p>	<p style="text-align: right;">132</p> <p>1 STATE</p> <p>2 know if I did or not. That is -- that is 12:19:11</p> <p>3 my testimony. I told you I didn't 12:19:13</p> <p>4 specifically recall saying it in those 12:19:16</p> <p>5 words, but I -- I got this what I believed 12:19:17</p> <p>6 was an assurance on the phone the day I 12:19:22</p> <p>7 accepted the job that, you know, had -- my 12:19:24</p> <p>8 interpretation was that that was what he 12:19:30</p> <p>9 wanted to do. 12:19:35</p> <p>10 Q. Did Mr. Fried ever tell you he 12:19:35</p> <p>11 wanted to retire? 12:19:37</p> <p>12 A. I think he did. Not in those 12:19:38</p> <p>13 specific words, but I think what was said 12:19:40</p> <p>14 to me was concluded by me to mean that. 12:19:42</p> <p>15 Q. Who is John Leonard? 12:19:46</p> <p>16 A. John Leonard is -- excuse me -- 12:19:49</p> <p>17 the COO of the company. 12:19:52</p> <p>18 Q. And how long has he worked for 12:19:53</p> <p>19 the company? 12:19:55</p> <p>20 A. I believe over 20 years. 12:19:56</p> <p>21 Q. Do you know if he and Mr. Fried 12:19:58</p> <p>22 worked together? 12:20:00</p> <p>23 A. I believe they worked together 12:20:01</p> <p>24 for many years. 12:20:03</p> <p>25 Q. And so you don't think Mr. 12:20:03</p>
<p style="text-align: right;">131</p> <p>1 STATE</p> <p>2 Q. So when you wrote senior team, 12:18:11</p> <p>3 you are referring solely to John Leonard? 12:18:13</p> <p>4 A. I was referring to John Leonard 12:18:16</p> <p>5 and -- other members of the senior group 12:18:17</p> <p>6 that had been in the company a long time. 12:18:21</p> <p>7 Q. So prior to you accepting an 12:18:25</p> <p>8 offer for employment from LVI, you were 12:18:28</p> <p>9 told by people that Burt would never 12:18:30</p> <p>10 retire? 12:18:40</p> <p>11 A. That they thought that. I 12:18:40</p> <p>12 didn't believe that. I didn't believe 12:18:41</p> <p>13 that the employees at the company had 12:18:42</p> <p>14 specific knowledge as to what Burt's 12:18:43</p> <p>15 intentions were. This is why -- this is 12:18:46</p> <p>16 why I had a conversation with Burt three 12:18:48</p> <p>17 days later because I had gotten certain 12:18:50</p> <p>18 information from Simmons that said this is 12:18:52</p> <p>19 the intentions, and, you know, I was 12:18:55</p> <p>20 getting conflicting data. I was 12:18:59</p> <p>21 collecting data trying to figure out for 12:19:02</p> <p>22 myself what was going on. 12:19:04</p> <p>23 Q. But yet you never asked Mr. 12:19:05</p> <p>24 Fried if he intended to retire? 12:19:08</p> <p>25 A. I just didn't -- I -- I don't 12:19:09</p>	<p style="text-align: right;">133</p> <p>1 STATE</p> <p>2 Leonard would know Burt's intentions about 12:20:05</p> <p>3 his retirement? 12:20:07</p> <p>4 A. No. 12:20:08</p> <p>5 Q. And you think you would have a 12:20:09</p> <p>6 better indication of that based on three 12:20:13</p> <p>7 phone conversations? 12:20:14</p> <p>8 MS. SELTZER: Objection to the 12:20:15</p> <p>9 form. 12:20:17</p> <p>10 A. I believe I would have the 12:20:17</p> <p>11 ability to make my own conclusion based on 12:20:18</p> <p>12 collecting information from different 12:20:21</p> <p>13 people, and based on information from 12:20:23</p> <p>14 someone that owns the company telling me 12:20:27</p> <p>15 it is Burt's desire to retire it is a 12:20:30</p> <p>16 logical conclusion I could draw. 12:20:33</p> <p>17 Q. Okay. Why did you write in the 12:20:35</p> <p>18 second -- third sentence "That is not a 12:20:40</p> <p>19 healthy situation for Burt or LVI."? 12:20:42</p> <p>20 A. The healthy situation for LVI 12:20:45</p> <p>21 relates back to the second paragraph, 12:20:51</p> <p>22 second sentence, and that is the concern I 12:20:54</p> <p>23 had with a singular focus and confusion 12:20:58</p> <p>24 with the team about who is in charge. I 12:21:02</p> <p>25 felt like a significant problem in the 12:21:04</p>

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<p>1 STATE</p> <p>2 A. He was a business development 02:27:36</p> <p>3 employee working primarily with hotels and 02:27:38</p> <p>4 hospitality. 02:27:41</p> <p>5 Q. Nationwide? 02:27:43</p> <p>6 A. Yes, pretty much. 02:27:44</p> <p>7 Q. Was he based out of a certain 02:27:45</p> <p>8 branch? 02:27:48</p> <p>9 A. He -- he worked primarily in the 02:27:48</p> <p>10 northeast, New York, New Jersey, Westport. 02:27:51</p> <p>11 Q. Now, were you -- when you refer 02:27:54</p> <p>12 to reviews in the first sentence, was that 02:28:05</p> <p>13 performance reviews? 02:28:07</p> <p>14 A. Yes. 02:28:08</p> <p>15 Q. And why were you taking Burt's 02:28:09</p> <p>16 place on the reviews for these people? 02:28:13</p> <p>17 A. Because he and I agreed that I 02:28:15</p> <p>18 would. 02:28:17</p> <p>19 Q. Okay. 02:28:17</p> <p>20 A. Not in this e-mail, but there is 02:28:20</p> <p>21 other e-mail I am absolutely certain 02:28:22</p> <p>22 somewhere that says that. I mean I can 02:28:25</p> <p>23 almost visualize the words. Do you want 02:28:31</p> <p>24 me to transition these to you? It is 02:28:34</p> <p>25 probably in this e-mail called 02:28:36</p>	<p>1 STATE</p> <p>2 transitions this to you, was it the 02:29:29</p> <p>3 responsibility of reviews in general or 02:29:30</p> <p>4 just reviews for these two individuals? 02:29:32</p> <p>5 A. Reviews for these two 02:29:34</p> <p>6 individuals. 02:29:35</p> <p>7 Q. So do you know if Mr. Fried was 02:29:35</p> <p>8 reviewing other employees? 02:29:37</p> <p>9 A. I do not. 02:29:38</p> <p>10 Q. Okay. 02:29:40</p> <p>11 (Plaintiff's Exhibit 27 marked 02:30:20</p> <p>12 for identification.) 02:30:20</p> <p>13 (Document handed to witness.) 02:30:20</p> <p>14 Q. Mr. State, you have in front of 02:30:22</p> <p>15 you a document that has been marked 02:30:23</p> <p>16 Plaintiff's Exhibit 27. 02:30:25</p> <p>17 Can you review the document and 02:30:32</p> <p>18 let me know if you have seen it before? 02:30:33</p> <p>19 A. I am familiar with the content. 02:30:36</p> <p>20 I don't know if I have seen this specific 02:30:37</p> <p>21 document or not. 02:30:39</p> <p>22 Q. Do you have any reason to doubt 02:30:39</p> <p>23 that you didn't receive any of these 02:30:41</p> <p>24 e-mails? 02:30:45</p> <p>25 A. No. 02:30:45</p>
183	185
<p>1 STATE</p> <p>2 transitionary matters or something like 02:28:38</p> <p>3 that. 02:28:39</p> <p>4 Q. So he asked you? 02:28:40</p> <p>5 A. Yes. 02:28:41</p> <p>6 Q. And is this something a CEO 02:28:41</p> <p>7 does, is review the performance of 02:28:43</p> <p>8 employees? 02:28:45</p> <p>9 A. Yes. 02:28:45</p> <p>10 Q. Okay. Of all employees or just 02:28:46</p> <p>11 certain level employees? 02:28:48</p> <p>12 A. It -- these are employees that I 02:28:49</p> <p>13 wouldn't typically have seen as a CEO 02:28:52</p> <p>14 doing, but the process had been started at 02:28:56</p> <p>15 the CEO level, and so I continued it at 02:28:59</p> <p>16 the CEO level. 02:29:01</p> <p>17 Q. Because in the past the CEO 02:29:02</p> <p>18 would do employee reviews? 02:29:05</p> <p>19 A. No. There was an employee 02:29:06</p> <p>20 review done on these two individuals for 02:29:07</p> <p>21 poor performance, and the follow-up review 02:29:10</p> <p>22 was transitioned to me after I came into 02:29:12</p> <p>23 the company. 02:29:14</p> <p>24 Q. Okay. And when Mr. Fried asked 02:29:16</p> <p>25 you if you wanted -- whether he should 02:29:24</p>	<p>1 STATE</p> <p>2 Q. Okay. Or send any of these 02:30:46</p> <p>3 e-mails? 02:30:56</p> <p>4 A. No. 02:30:57</p> <p>5 Q. Did you ask Burt to look for new 02:30:57</p> <p>6 office space for the New York office? 02:31:04</p> <p>7 A. No. 02:31:06</p> <p>8 Q. Did you ask anybody to look for 02:31:07</p> <p>9 new office space for the New York office? 02:31:09</p> <p>10 A. I asked Joseph Annarumma to take 02:31:10</p> <p>11 that task up. 02:31:13</p> <p>12 Q. Did you meet with Burt on 02:31:14</p> <p>13 October 19? 02:31:21</p> <p>14 A. Yes. 02:31:22</p> <p>15 Q. And did the topic of new office 02:31:22</p> <p>16 space for the New York office even come 02:31:28</p> <p>17 up? 02:31:30</p> <p>18 A. I -- I believe it did come up. 02:31:31</p> <p>19 Q. And what was -- why did it come 02:31:33</p> <p>20 up? 02:31:36</p> <p>21 A. Because the lease is expiring in 02:31:36</p> <p>22 the current location and we were looking 02:31:39</p> <p>23 for -- we needed to look for either a 02:31:41</p> <p>24 place to go or to renegotiate the lease in 02:31:43</p> <p>25 the space we were in. 02:31:46</p>

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<p>1 STATE</p> <p>2 thing. 05:52:46</p> <p>3 Q. In the next sentence you wrote, 05:52:46</p> <p>4 "In a battle with founder about his need 05:52:48</p> <p>5 to retire, but board gets it and is 05:52:50</p> <p>6 working to exit him with some respect." 05:52:52</p> <p>7 A. Right. 05:52:55</p> <p>8 Q. When you use the word "founder", 05:52:56</p> <p>9 are you referring to Mr. Fried? 05:52:58</p> <p>10 A. Yes. 05:53:00</p> <p>11 Q. What did you mean by in a battle 05:53:00</p> <p>12 with founder about his need to retire, 05:53:02</p> <p>13 but -- 05:53:06</p> <p>14 A. That the board was in a battle 05:53:07</p> <p>15 with -- with Mr. Fried. 05:53:08</p> <p>16 Q. And what did you mean by the 05:53:12</p> <p>17 words "his need to retire"? 05:53:13</p> <p>18 A. I -- I think what I am referring 05:53:15</p> <p>19 to there is that there was a census that 05:53:17</p> <p>20 Burt had made, and this was Brian's words 05:53:20</p> <p>21 I guess, that Burt had made an indication 05:53:23</p> <p>22 in '05, '06 that he intended to retire. 05:53:26</p> <p>23 The board actually thought he was a part 05:53:30</p> <p>24 time -- had part-time involvement in the 05:53:33</p> <p>25 company, and then it came to light in this 05:53:35</p>	<p>1 STATE</p> <p>2 know what his objective is today. I think 05:54:39</p> <p>3 he may have been happy to retire if he got 05:54:42</p> <p>4 the right package going out. I just don't 05:54:44</p> <p>5 know. I -- 05:54:47</p> <p>6 Q. This -- 05:54:47</p> <p>7 A. It is just speculative. I don't 05:54:48</p> <p>8 have any idea. 05:54:51</p> <p>9 Q. But at this point you still 05:54:52</p> <p>10 didn't ask or did you ask Mr. Fried if he 05:54:54</p> <p>11 wanted to retire at this point? 05:54:57</p> <p>12 A. Nobody was asking Mr. Fried 05:54:59</p> <p>13 anything at this point. 05:55:01</p> <p>14 Q. Okay. Why were you discussing 05:55:02</p> <p>15 LVI matters with Mr. Hicks? 05:55:09</p> <p>16 A. Because Mr. Hicks was a 05:55:10</p> <p>17 prospective new hire for the company, and 05:55:13</p> <p>18 I didn't want to get into the business 05:55:16</p> <p>19 of -- of getting him involved in the 05:55:18</p> <p>20 company. He knew that -- that there was a 05:55:19</p> <p>21 lot of unrest in the company. He wanted 05:55:21</p> <p>22 to make sure that if he was going to leave 05:55:23</p> <p>23 his job and come to LVI, he -- he would 05:55:25</p> <p>24 work during -- he is a former employee of 05:55:29</p> <p>25 mine from a past relationship -- that I 05:55:31</p>
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<p>1 STATE</p> <p>2 board meeting that Burt indicated he was 05:53:38</p> <p>3 working -- he had always worked full time. 05:53:41</p> <p>4 I think there was a lot of surprise at the 05:53:44</p> <p>5 board meeting at the involvement 05:53:46</p> <p>6 that -- that Burt indicated he had had 05:53:48</p> <p>7 with the company, and so there was a lot 05:53:50</p> <p>8 -- I mean the discussion at the board 05:53:52</p> <p>9 meeting was specifically about Burt stated 05:53:54</p> <p>10 -- according to Brian Burt stated interest 05:53:58</p> <p>11 or intent to retire, and, you know, we 05:54:00</p> <p>12 were in a battle about that. 05:54:04</p> <p>13 Q. So at that meeting, 05:54:05</p> <p>14 did -- November 4 meeting -- 05:54:10</p> <p>15 A. That is -- yes, the board 05:54:11</p> <p>16 meeting. 05:54:13</p> <p>17 Q. Did you -- were you still under 05:54:13</p> <p>18 the impression that Mr. Fried wanted to 05:54:15</p> <p>19 retire? 05:54:16</p> <p>20 A. Was I under the impression? I am 05:54:17</p> <p>21 not sure what I concluded. The meeting 05:54:24</p> <p>22 was so bizarre. It -- I concluded that it 05:54:26</p> <p>23 seemed to be Burt's interest to have a 05:54:30</p> <p>24 fight. I didn't really understand what 05:54:33</p> <p>25 his objective was at that point. I don't 05:54:36</p>	<p>1 STATE</p> <p>2 was going to be there. 05:55:33</p> <p>3 Q. How did he know that there was 05:55:34</p> <p>4 unrest in the company? 05:55:35</p> <p>5 A. I had had a conversation with 05:55:36</p> <p>6 him. He is a friend. He is a personal 05:55:38</p> <p>7 friend. 05:55:40</p> <p>8 Q. And what I -- maybe I didn't 05:55:40</p> <p>9 follow you, but when you wrote "his need 05:55:45</p> <p>10 to retire" -- "in a battle with founder 05:55:51</p> <p>11 about his need to retire," were 05:55:57</p> <p>12 you the -- when you said battle I believe 05:56:01</p> <p>13 you testified that you referred to the 05:56:03</p> <p>14 board? 05:56:06</p> <p>15 A. That is the board. 05:56:06</p> <p>16 Q. Does that include you? 05:56:07</p> <p>17 A. Yes and no. I think it really 05:56:08</p> <p>18 includes the outside investors of the 05:56:10</p> <p>19 company. It is -- this all got down to 05:56:12</p> <p>20 what they wanted to do, whether there was 05:56:15</p> <p>21 a relationship that we both stayed or one 05:56:19</p> <p>22 or the other of us wasn't going to be 05:56:22</p> <p>23 there. 05:56:24</p> <p>24 Q. So it was either -- 05:56:24</p> <p>25 MR. DATOO: Strike that. 05:56:28</p>

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<div>418</div> <div><div>1STATE</div><div>2MR. DATOO: Okay. Can we just 06:44:40</div><div>3take a quick break? I want to see if 06:44:41</div><div>4there is anything left. 06:44:43</div><div>5THE VIDEOGRAPHER: We're going 06:44:44</div><div>6off the record. 6:44 p.m. 06:44:45</div><div>7(Recess taken.) 06:44:49</div><div>8THE VIDEOGRAPHER: We're 06:48:51</div><div>9returning to the record. 6:48 p.m. 06:48:51</div><div>10Q. Mr. State, who put or placed 06:48:54</div><div>11Ms. Dembin on the list for those to be 06:48:58</div><div>12laid off? 06:49:02</div><div>13A. I am not certain. It probably 06:49:03</div><div>14was Joseph or John, but I am not certain. 06:49:12</div><div>15Q. John Leonard? 06:49:14</div><div>16A. Yes. 06:49:15</div><div>17(Continued on next page.) 06:49:15</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<div>420</div> <div><div>1</div><div>2CERTIFICATION</div><div>3</div><div>4</div><div>5</div><div>6I, DEBBIE ZAROMATIDIS, a Shorthand</div><div>7Reporter and a Notary Public, do hereby</div><div>8certify that the foregoing witness, SCOTT</div><div>9STATE, was duly sworn on the date</div><div>10indicated, and that the foregoing is a</div><div>11true and accurate transcription of my</div><div>12stenographic notes.</div><div>13I further certify that I am not</div><div>14employed by nor related to any party to</div><div>15this action.</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23DEBBIE ZAROMATIDIS</div><div>24</div><div>25</div></div>
<div>419</div> <div><div>1STATE</div><div>2MR. DATOO: Okay. Thank you 06:49:16</div><div>3very much. I have no further questions. 06:49:19</div><div>4THE VIDEOGRAPHER: We're going 06:49:20</div><div>5off the record. 6:49 p.m. End of today's 06:49:21</div><div>6questioning. 06:49:27</div><div>7(Time noted: 6:49 p.m.) 06:49:28</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14SCOTT STATE</div><div>15</div><div>16Subscribed and sworn to before me</div><div>17this day of , 2011</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<div>421</div> <div><div>1</div><div>2EXHIBITS</div><div>3</div><div>4PLAINTIFF'S</div><div>5EXHIBIT DESCRIPTION PAGE</div><div>622 Press release 92</div><div>723 Offer letter 152</div><div>824 E-mail 171</div><div>925 E-mail 175</div><div>1026 E-mail 180</div><div>1127 E-mail 184</div><div>1228 E-mail 203</div><div>1329 E-mail 210</div><div>1430 List of job duties 215</div><div>1531 List of job duties 227</div><div>1632 E-mail 266</div><div>1733 E-mail 293</div><div>1834 Agenda 302</div><div>1935 E-mail 316</div><div>2036 E-mail 360</div><div>2137 E-mail 390</div><div>2238 (Exhibit skipped)</div><div>2339 Draft press release 145</div><div>24</div><div>25</div></div>

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VERITEXT REPORTING COMPANY

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Exhibit 12

ORIGINAL

1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

3

4

5 BURTON T. FRIED,

5

Plaintiff,

6

-against-

7

10 Civ. 9308 (JSR) (JCF)

8 LVI SERVICES, INC.; LVI PARENT CORP.;

9 CODE HENNESSY SIMMONS LLC d/b/a CHS

PRIVATE EQUITY V LP; APOLLO

10 INVESTMENT CORP.; SCOTT E. STATE, in
his official and individual capacities;

11 BRIAN SIMMONS, in his official and
individual capacities; RAJAY BAGARIA,

12 in his official and individual
capacities; GERALD J. GIRARDI, in his
official and individual capacities,

13

Defendants.

14

15

16 May 20, 2011
9:56 a.m.

17

Videotaped deposition of

18 BURTON T. FRIED, taken by attorneys for

19 Defendants, pursuant to notice, held at the

20 offices of Sidley Austin LLP, 787 Seventh

21 Avenue, New York, New York, before Nicole

22 Cannistraci, a Shorthand Reporter and Notary

23 Public within and for the State of New York.

24 Pages 293 - 297 were marked "Highly Confidential"

25 and separately bound.

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1

2 A p p e a r a n c e s :

3

4

THOMPSON WIGDOR & GILLY LLP
Attorneys for Plaintiff
85 Fifth Avenue
New York, New York 10003

5

6

BY: DOUGLAS H. WIGDOR, ESQ.

7

8

SIDLEY AUSTIN LLP
Attorneys for Defendants LVI Services,
Inc., LVI Parent Corp., Scott E.
State, Brian Simmons, Rajay Bagaria
and Gerald J. Girardi
787 Seventh Avenue
New York, New York 10019

9

10

11

12

BY: JOANNE SELTZER, ESQ.
MICHAEL D. MANN, ESQ.

13

14

15

Also Present:

16

ILITCH PETERS - Videographer

17

GREGORY G. DiCARLO, ESQ.
LVI Services

18

19

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21

22

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24

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Elisa Dreier Reporting Corp. (212) 557-5558
950 Third Avenue, New York, NY 10022

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED, by and between the attorneys for the
respective parties hereto, that the sealing
and filing of the within deposition be
waived; that such deposition may be signed
and sworn to before any officer authorized
to administer an oath with the same force
and effect as if signed and sworn to before
a Justice of this Court.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
form, are reserved to the time of trial.

IT IS FURTHER STIPULATED AND
AGREED that the within examination and any
corrections thereto may be signed before any
Notary Public with the same force and effect
as if signed and sworn to before this Court.

1 Burton T. Fried

2 THE VIDEOGRAPHER: This is tape
3 number one of the videotaped deposition
4 of Mr. Burton T. Fried in the matter of
5 Burton T. Fried, plaintiff, against LVI
6 Services, Incorporated, et al.,
7 defendants, in the United States
8 District Court, Southern District of
9 New York, case number 10 Civ 9308
10 (JSR) (JCF).

11 This deposition is being held at
12 Sidley Austin, 787 Seventh Avenue, on
13 May 20th, 2011 at approximately
14 9:56 a.m.

15 My name is Ilitch Peters from the
16 firm of Elisa Dreier Reporting Services
17 and I'm the legal video specialist. The
18 court reporter is Nicole Cannistraci, in
19 association with Elisa Dreier Reporting
20 Services located at 950 Third Avenue,
21 New York, New York.

22 For the record, will counsel
23 please introduce themselves.

24 MR. WIGDOR: For the plaintiff,
25 Doug Wigdor, Thompson Wigdor & Gilly.

Elisa Dreier Reporting Corp. (212) 557-5558
950 Third Avenue, New York, NY 10022

1 Burton T. Fried

2 MS. SELTZER: And Joanne Seltzer
3 from Sidley Austin, representing LVI
4 Services, Inc., LVI Parent Corp., Scott
5 State, Brian Simmons, Rajay Bagaria and
6 Gerald Girardi.

7 MR. MANN: Michael Mann from
8 Sidley Austin, representing same
9 defendants.

10 MS. SELTZER: And we have here
11 also Greg DiCarlo, who is the general
12 counsel for LVI Services, Inc.

13 THE VIDEOGRAPHER: Now will the
14 court reporter please swear in the
15 witness.

16 B U R T O N T. F R I E D, having been first
17 duly sworn by Nicole Cannistraci, a Notary
18 Public of the State of New York, was examined
19 and testified as follows:

20 EXAMINATION

21 BY MS. SELTZER:

22 Q. Good morning, Mr. Fried.

23 A. Good morning.

24 Q. Have you ever been deposed before?

25 A. Yes.

1 Burton T. Fried

2 Mr. Simmons saying, "We have to move on" or "we
3 have to plan for the future" was his support of
4 the ageist statement that Scott State made; is
5 that correct?

6 A. Yes.

7 Q. Couldn't it be that Mr. Simmons
8 was actually saying that he was supporting
9 Mr. State's actions in moving some of your
10 responsibilities to management as opposed to the
11 statement?

12 MR. WIGDOR: Objection.

13 Go ahead.

14 A. He was supporting the ageist
15 remark and the actions he was taking because of
16 the ageist remark by saying, "We have to plan
17 for the future." Planning for the future,
18 because of the ageist remark, is inalterably
19 connected and merged.

20 In my statement to him, it wasn't
21 two separate conversations. It was one complete
22 dialogue in which he supported by saying, "We
23 have to plan for the future." He didn't say, "I
24 don't consider you too old but we have to assign
25 duties for other reasons." His simple comment

1 Burton T. Fried

2 complaint?

3 MR. WIGDOR: Objection.

4 A. Yes.

5 Q. Any other reason why you didn't
6 name Mr. Schnabel in your complaint?

7 MR. WIGDOR: Objection. Calls for
8 privileged communications.

9 Q. Other than what you've discussed
10 with your counsel, is there any other reason why
11 you didn't name Mr. Schnabel?

12 A. I only named people who I knew
13 supported it, my termination, because of age.
14 And I did not name the board members who did not
15 evidence support of that during the course of
16 the meeting on -- or in telephone conversations.

17 Q. Did Mr. Simmons ever tell you that
18 the decision was unanimous?

19 A. No.

20 Q. Did anyone ever tell you that?

21 A. No.

22 Q. What year did you join LVI,
23 Mr. Fried?

24 A. July 1986.

25 Q. And what was your title at that

1 Burton T. Fried

2 time?

3 A. General counsel. And I have --
4 maybe I've been called president, but I didn't
5 perform as such.

6 Q. Okay. So your first position with
7 LVI was as general counsel?

8 A. Yes.

9 Q. And what was your position
10 subsequent to that title?

11 A. A few years later I became
12 president and CEO.

13 Q. So that would have been around
14 1988, '89?

15 A. Yes. '89, I believe.

16 Q. And -- go ahead.

17 A. Yeah, correct.

18 Q. And how long did you hold that
19 position?

20 A. I held that position for 17 years.

21 Q. When did you start working out of
22 the Westport office?

23 A. September of 2003.

24 Q. And what was the reason for your
25 moving to the Westport office?

1 Burton T. Fried

2 A. I could be more effective in the
3 management of the company through less travel
4 and more effective in the development of and
5 oversight, really, of the New York corporate
6 office and the development of the business in
7 New York and making plans for the fact that at
8 my request we were about to be engaged in the
9 recruitment of the CEO, new CEO, at which point
10 I would become chairman.

11 Q. Why did you think that being in
12 Connecticut would make you more effective with
13 respect to oversight of what was happening in
14 New York?

15 A. I no longer had to travel three
16 hours a day, and I showed up for work usually
17 around seven o'clock in the morning, and rather
18 than traveling and first arriving at the office
19 sometime later.

20 Q. Do you live in Westport?

21 A. Yes.

22 Q. Was a consideration for your
23 moving to a Westport office convenience to you
24 with respect to your commute to work?

25 A. Yes.

1 Burton T. Fried

2 Q. Did you have an office in
3 New York?

4 A. Yes.

5 Q. Where was that located?

6 A. Eighty Broad Street.

7 Q. And with respect to a normal week,
8 how many days did you work in New York as
9 opposed to the days that you worked in Westport,
10 Connecticut?

11 MR. WIGDOR: You're talking about
12 physically or what he was doing?

13 MS. SELTZER: No, physically.

14 A. I worked in the New York office
15 maybe two, three days a week and Connecticut
16 two, three days a week. It depended upon
17 business matters as to where I worked, but I
18 also, in addition -- even if I wasn't physically
19 in the New York office, I was having meetings in
20 New York City on securing work and other legal
21 matters and business matters. So I wasn't
22 limiting it -- if I worked in Connecticut three
23 days, it wouldn't necessarily mean I was only
24 two days in New York. I could have been there
25 longer than that.

1 Burton T. Fried

2 Q. So it's your testimony that you
3 split your week fairly evenly between New York
4 and Westport?

5 A. Yeah, and that was also a concern
6 of Code Hennessy later on, that I -- that I make
7 sure that I'm, you know, in Connecticut --
8 rather, in New York. They were concerned about
9 the corporate staff and my presence.

10 Q. In Connecticut or in New York?

11 A. In New York, later.

12 Q. This splitting of the week between
13 Connecticut and New York, was that pretty much
14 for the entire period of time after you moved to
15 the Westport office?

16 A. In what period of time are you
17 talking about?

18 Q. That's fair enough.

19 After Scott State took the job as
20 CEO/president of the company, did you also split
21 your weeks in between the New York and
22 Connecticut offices?

23 A. No. I visited the New York office
24 but it wasn't on a prescribed -- where necessary
25 I came into the New York office for meetings.

1 Burton T. Fried

2 Q. Was that your decision to
3 transition into a chairman role or was it the
4 decision of CHS or any entity involved in the
5 purchase of the company?

6 A. It was my decision.

7 Q. Why did you decide that you wanted
8 transitioning to an active chairman role?

9 A. We had achieved revenues
10 approaching 300 million. I felt that the
11 company had the capability of continuing its
12 profitable growth and achieving revenues with
13 profits of a billion.

14 At that point in time we were
15 dominating -- the dominant force in the nation
16 in the performance of our services. We had a
17 brand name. We had 25-plus offices. We were
18 probably the largest of our kind in the planet.
19 And I believed the company needed the management
20 skill sets to take us to a billion and I didn't
21 know that I had that capability. And I then
22 recommended to Blue Point that we conduct a
23 search. And they asked me to retain a
24 recruiter. They supported the effort to retain
25 a recruiter.

1 Burton T. Fried

2 Q. Can I stop you one second? We'll
3 talk about the recruitment from this point.
4 Right now let's just focus back a second to your
5 decision, if it was your decision, to take the
6 role of chairman.

7 And I think you just testified
8 that you did that because you believed that the
9 skill sets needed to take the company to the
10 next step in terms of profitability were maybe
11 skill sets that you didn't have. Am I --

12 A. Yes. I felt there had to be a
13 manager out there that could contribute the
14 skill sets to take us, you know, to triple our
15 earnings and to manage the company effectively.

16 Q. It also says here, "This
17 transition was planned and announced prior to
18 initiating the sales process."

19 Was your moving into a position of
20 chairman from the position of CEO a condition of
21 CHS's hire -- purchase of LVI?

22 A. A condition?

23 Q. Yes.

24 A. No. We -- we began the
25 recruitment process before I ever knew the name

1 Burton T. Fried
2 Code Hennessy, and retained the recruiter even
3 before I heard the name Code Hennessey, and
4 suspended this recruitment process even before I
5 ever heard the name Code Hennessey, because we
6 now decided to move forward with a possible sale
7 of the company and I felt that it would be
8 useless to identify a candidate and select one
9 when we couldn't introduce the new owner for
10 whom he would work. So we suspended that
11 process.

12 Q. So at the time that Code Hennessey
13 bought LVI, they knew that you had intended to
14 step from the position of CEO to the position of
15 chairman and to hire a CEO to take your place in
16 that position; is that correct?

17 A. There was no intention. They knew
18 I would. And that was the plan before and they
19 bought the company with that understanding.

20 Q. Was there ever a chairman before
21 you in that position?

22 A. No. I was the most senior officer
23 for the period of time from 19 -- certainly
24 performing the function from 1989 through this
25 date, which was 2005.

1 Burton T. Fried

2 Q. What was your understanding of the
3 term "active chairman role"?

4 A. I would participate in executive
5 decisions.

6 Q. What types of executive decisions
7 did you believe were a proper prominence for an
8 active chairman of the board?

9 A. Well, it wasn't what I thought.
10 It was what the board thought and senior
11 management supported, that role. That was
12 initially just defined for the purposes of a
13 document of strategic growth, which is
14 acquisitions, organic growth or acquisitions.
15 But my forte and contribution historically had
16 been in the legal area and risk assessment and
17 in the negotiation of major contracts and in
18 claims -- the development of claims and
19 negotiation and approval of claims. Now I'm
20 talking about claims in the multimillion dollars
21 claims, project claims.

22 And so without defining it on
23 November 16th, when the letter agreement was
24 signed as to my role, I sort of morphed into
25 that role in support of the actions of the CEO,

1 Burton T. Fried
2 with his consent and clearly with the
3 understanding and consent of the board of both
4 LVI Services and LVI Acquisition, the then
5 parent of LVI Services.

6 And was requested by the board,
7 which included Mr. Simmons, Mr. Hogan,
8 Mr. Hennessy from CHS, to actively pursue a
9 variety of matters on behalf of the company,
10 including collection of approximately
11 \$10 million of receivables that were owed as a
12 result of Hurricane Katrina.

13 Q. We'll get to the responsibilities
14 under Mr. McNamara in a second. I just want to
15 focus back to your understanding of the role of
16 active chairman at the time that this company
17 was sold to CHS.

18 A. Okay.

19 Q. And you mentioned a second ago
20 that you believed -- was it your understanding
21 that the strategic initiatives that you were
22 going to be asked to do were determined by the
23 board of directors and the CEO that would be
24 taking your position?

25 A. I don't think the board of

1 Burton T. Fried

2 directors ever got involved in the operations of
3 the business. They were there simply to listen
4 quarterly, if that frequent, to results of
5 operations and the plans for the future and to
6 make recommendations to management of what steps
7 to take and who to use and how to get there.

8 Q. So who would you believe would
9 have been responsible for determining the types
10 of growth initiatives that you would be focused
11 on as chairman of LVI?

12 A. That would be the CEO, and that
13 would be with the support of the board.

14 Q. Did you view the chairman role as
15 an opportunity to remove yourself from the
16 day-to-day management of the firm?

17 A. Yes.

18 Q. Why did you want to remove
19 yourself from the day-to-day management?

20 A. Simply because the CEO role, by
21 its title, as chief executive officer, should
22 have the day-to-day and final decision in the
23 operations of the business. And the chairman
24 should be a person who supports the actions of
25 the CEO and in any way that the CEO seeks that

1 Burton T. Fried

2 advice and counsel.

3 Q. Did you play a role in recruiting
4 the new CEO, the very first CEO after you --
5 after the sale or during the sale of CHS -- of
6 LVI to CHS?

7 A. We commenced -- we started up
8 again the recruitment process under the original
9 retainer agreement that we had signed with
10 Heidrick & Struggles, and only this time it was
11 like Blue Point. Mr. Simmons, on behalf of Code
12 Hennessy, asked that I select the candidate,
13 find the candidate, select the candidate and
14 present the candidate for the approval of Code
15 Hennessey.

16 Q. So am I to understand that you
17 were in charge of the recruiting process for the
18 CEO position?

19 A. I was the sole person who -- who
20 was engaged to -- with that task and worked with
21 Hunter --

22 Q. Was Mr. McNamara the only person
23 that presented as a CEO candidate?

24 A. No. There were others, but for --
25 for consideration and review, but it was

1 Burton T. Fried

2 A. Failure of Code Hennessy to live
3 up to their obligations to him and the company
4 insofar as growth acquisitions, and he decided
5 to leave.

6 Q. So did he believe there weren't
7 enough growth acquisitions?

8 A. He felt that -- I believe, I can't
9 read the man's mind, but I believe, and he
10 evidenced -- he expressed that acquisitions --
11 opportunities that he presented to the board
12 were not embraced, and recommendations -- other
13 recommendations he was making to the equity
14 owner with respect to the financial structure of
15 the company were not acted on, and later proved
16 that his advice should have been taken.

17 Q. When Mr. McNamara resigned, you
18 stepped in as interim president and CEO; is that
19 correct?

20 A. I was requested by Brian Simmons
21 of the board.

22 Q. So Mr. Simmons asked you to step
23 in; is that correct?

24 A. Personally.

25 Q. Is that something you wanted to

1 Burton T. Fried

2 do?

3 A. I've served LVI and I -- they had
4 a need, and it wasn't a position that I wanted,
5 but was by necessity. There was no one else
6 that could handle the position, especially in
7 the trying times of restructuring and the
8 economy.

9 Q. When you were working as chairman,
10 were you working full-time?

11 A. Yes.

12 Q. Was there ever an agreement that
13 you would be working part-time while you were
14 working as chairman?

15 A. No. After Mr. McNamara took over,
16 he discussed with me a reduction in my
17 compensation in connection with now that I was
18 no longer CEO but chairman. And I agreed to a
19 reduction of 20 percent, down to 600,000,
20 provided that the amount of time that I had to
21 devote was no more than 20 percent less than a
22 full week, which was four days.

23 Q. I don't mean to interrupt you, but
24 is it your testimony then that you did go to a
25 more part-time schedule, less than a full-time

1 Burton T. Fried

2 schedule?

3 A. For one week.

4 Q. For one week?

5 A. And then I went back to a
6 full-time schedule at the same compensation that
7 I agreed to, which was the reduced amount.

8 Q. Why did you go back to full-time?

9 A. My services were necessary.

10 Q. Did Mr. McNamara ask you to go
11 back full-time?

12 A. No.

13 Q. Did the board?

14 A. No. The demands of the business
15 required it, and as everyone in the company
16 knew, including people at the Westport office, I
17 worked from 7 in the morning straight until 5 or
18 5:30, sometimes 6.

19 Q. When Mr. McNamara resigned, did
20 you ever think about taking over the role of CEO
21 again?

22 A. No.

23 Q. Why?

24 A. I felt the company had the need to
25 have somebody in there that could grow the

1 Burton T. Fried

2 ever heard of before.

3 Q. In fact, you knew Mr. State, is
4 that correct, prior to this search?

5 A. I had known Mr. State and he was
6 sort of introduced to be considered for the
7 position by one or more managers of LVI.

8 Q. When did you meet Mr. State?

9 A. I met him in around '99 or 2000.

10 Q. And what was the circumstances
11 around which you met Mr. State?

12 A. We were in bankruptcy court for a
13 competitor of LVI.

14 Q. What was your understanding of
15 Mr. State's reputation at the time that you met
16 him and subsequent to that?

17 A. I didn't really know Mr. State
18 prior to my first meeting with him.

19 Q. Did you recommend to Mr. State
20 that he should apply for the position of CEO at
21 LVI?

22 A. I suggested that after being
23 requested to do that by other managers.

24 Q. What other managers?

25 A. I don't -- I believe it was

1 Burton T. Fried

2 Mr. Leonard and Mr. Messisco.

3 Q. Did you agree with their
4 assessment that he would be a good candidate for
5 the position?

6 A. I knew that he would not be the
7 candidate that -- like Mr. Hopkins. He didn't
8 have the management expertise or knowledge of a
9 Mr. Hopkins or a Mr. McNamara. But what he did
10 have was the capability, based upon his
11 representation, that he could bring substantial
12 business to the company in the power sector,
13 specifically Energy Solutions, which he claimed
14 to have a strong relationship with. And I felt
15 that what we needed at the time was to get
16 somebody in that could add 50 or \$100 million in
17 business to the company and provided he would
18 not change the culture. And I had him, as well
19 as the other candidates at that time,
20 interviewed by the COO, the CFO and the regional
21 managers so that they could give me their
22 opinion, because there was no one leading
23 candidate among the three in my mind. And they
24 selected Mr. State.

25 Q. What do you mean by changing the

1 Burton T. Fried

2 Falcon and Apollo and then the senior managers
3 of the company.

4 Q. Did you have some reservations
5 with respect to Mr. State's management
6 experience?

7 A. He wasn't in the profile that I
8 was hoping to secure, but clearly it appeared
9 that he had certainly the same or similar
10 experience or as much experience as the other
11 two candidates. So I had no objection and in
12 fact supported his hiring upon the
13 recommendation of the senior managers.

14 Q. So would you say that Mr. State
15 was your and the management's choice for the
16 position?

17 A. He was as a result of my adopting
18 the recommendation of the senior managers. He
19 wasn't the choice of Mr. Simmons but then he
20 became his choice.

21 Q. Did you have any conversations
22 with Mr. Simmons or any other CHS person about
23 the possibility of Scott State being hired?

24 A. It was simply we were proposing --
25 I proposed him as the choice of management and

1 Burton T. Fried

2 decision-maker.

3 Q. And you respond back to
4 Mr. Simmons that before Mr. McNamara accepted
5 the LVI CEO position, his only question of you
6 was how long you would continue at LVI. And you
7 responded a day, up to a year, subject to your
8 pleasure.

9 What did you mean by that comment?

10 A. As long as he wants.

11 Q. So you would stay either a day or
12 up to a year?

13 A. I would stay. Always my intention
14 was to stay for an extended duration, but I
15 wanted to give him the comfort that he was the
16 final decision-maker and I would stay as long as
17 he wanted, and therefore his reply was until I
18 leave.

19 Q. Had Mr. McNamara decided to
20 terminate you the day after he became the CEO,
21 would that have been in accordance with your
22 understanding of your promises to him?

23 A. Provided -- yes, provided it was
24 not the subject of age discrimination.

25 Q. You then write -- you write that

1 Burton T. Fried

2 Q. Anything in sum and substance that
3 was like that?

4 A. Absolutely no.

5 In fact, Mr. State thought I was
6 71 and when he made a statement to me on the
7 19th, his remark was after I said, "Why are you
8 taking away all of my responsibilities," he said
9 to me, "Burt, you're 71 years of age, how long
10 do you expect to work?" And my response to him
11 was, "Scott, I'm only 70 years of age."

12 We never had that -- that
13 conversation, and had we had the conversation,
14 he wouldn't say I was 71.

15 MS. SELTZER: Could you mark this,
16 please, as Exhibit 14.

17 (Discussion items marked Fried
18 Exhibit 14 for identification.)

19 Q. Did you meet with Mr. State on
20 October 19th?

21 A. I did.

22 Q. Did you meet with him in New York?

23 A. Yes.

24 Q. Was it in the offices of LVI?

25 A. Yes.

1 Burton T. Fried

2 A. That's what I said. I was giving
3 you my answer.

4 Q. Okay.

5 A. I said, "You want to go to the
6 next item."

7 Q. Okay. I thought you were talking
8 to me. Go ahead.

9 A. To State?

10 Q. Yeah.

11 A. And he said -- looked at the list
12 and he said. "I'm going to be reassigning all
13 your responsibilities to other managers and I'm
14 going to do that in the next 60 to 90 days, and
15 when that's completed, I can let you know if
16 there is anything else for you to do."

17 I didn't immediately respond
18 because I was in a state of shock. And my only
19 response was, "Scott, why would you do that?"

20 His response was, "Burt, you're 71
21 years of age, how long do you expect to work.
22 And what if you get hit by a truck" -- a bus,
23 rather -- "what if you get hit by a bus, and we
24 have to plan for the future."

25 My response to that, since this

1 Burton T. Fried
2 was the first time that there was any indication
3 that -- of what his -- what he was going to do
4 with my responsibilities -- so I said, "Scott,
5 number one, I'm 70 years of age, not 71. Number
6 two, the things that I perform for the company
7 is not -- there is no one here that performs
8 that, there is no duplicity, and based upon my
9 experience, I think I am performing it in a
10 manner in which I think can best serve the
11 interests of LVI Services. I don't plan to be
12 hit by a bus; I'm in good health and I expect to
13 work for a long period of time. I am healthy,
14 and by the way, there aren't many buses in
15 Westport, Connecticut."

16 And his response was, "Well,
17 that's the way I'm going to proceed."

18 I was in shock. I -- frankly, I
19 had no warning, no indication, and I said to
20 him, "Well, is there anything you want me to
21 do?" And he said, "Not that I can think of."
22 And I said, "Well, I'm in the midst of working
23 with Studley, who I retained to find corporate
24 office space, the lease expires next August, do
25 you want me to handle that?" He said, "Oh,

1 Burton T. Fried

2 nobody has, to this date, but you.

3 Q. Tell me again one more time the
4 sentence he said to you. I just want to make
5 sure we have it 100 percent clear on the record.

6 A. After he told me that he's
7 reassigning all the responsibilities, my
8 responsibilities to others, and within 60 to 90
9 days he'll determine what, if anything else, I
10 have to do, there is for me to do, and related
11 the conversation about "We have to plan for the
12 future and what if you get hit by a bus," I
13 asked him, "Why are you doing this?" His answer
14 was, "Burt, you're 71 years of age, how much
15 longer do you expect to work?"

16 Q. That was the sum of the statement?

17 A. Quote-unquote.

18 Q. Okay. Let's talk a little bit
19 about those telephone conversations you say that
20 you had subsequent to this meeting. You say the
21 first one, I believe, was with Mr. Simmons?

22 A. No. The first one was calling
23 counsel for advice.

24 Q. Okay. Barring that one, what was
25 the first one that we can talk about?

1 Burton T. Fried

2 A. Mr. Bagaria.

3 Q. So the first person you thought to
4 call was Mr. Bagaria?

5 A. Yes.

6 Q. Okay. And how long was the
7 telephone conversation?

8 A. I don't remember, 10-15 minutes.

9 Q. And did you speak with him about
10 the background of what the conversation was
11 between you and Mr. State, the areas of
12 responsibility?

13 A. I didn't detail the
14 responsibilities but I described the nature of
15 the meeting.

16 Q. And did you describe to him
17 Scott's intent to transfer those
18 responsibilities to other people?

19 A. Yes.

20 Q. Did you explain to him the comment
21 that you've just told me?

22 A. Yes.

23 Q. And what was Mr. Bagaria's
24 reaction?

25 A. "Scott State is the CEO and I

1 Burton T. Fried

2 support whatever he does."

3 Q. Did you tell Mr. Bagaria that you
4 believed that statement was in violation of age
5 discrimination statutes?

6 A. I said there was something illegal
7 about that insofar as using age as a reason for
8 the assignment.

9 Q. What did Mr. Bagaria say to that?

10 A. He said, "I continue to support
11 Scott State in whatever he does."

12 Q. Did you say anything else to
13 Mr. Bagaria?

14 A. Not that I recall.

15 Q. And the second conversation was
16 with whom?

17 A. With Brian Simmons.

18 Q. And how much after the
19 conversation with Mr. Bagaria did you speak to
20 Mr. Simmons?

21 A. It might have been a day or two.

22 Q. And what did you tell
23 Mr. Bagaria -- I mean Mr. Simmons, sorry.

24 A. I related the same conversation
25 that I had related to Mr. Bagaria.

1 Burton T. Fried

2 Q. Word for word?

3 A. Absolutely.

4 Q. So you told him about the
5 responsibilities, you told him about Mr. State's
6 response to those, about the statement that
7 Mr. State made?

8 A. Yes.

9 Q. And that you felt that this was in
10 some way discriminatory on the basis of age?

11 A. Yes.

12 Q. And what was Mr. Simmons' response
13 to you?

14 A. At first he said -- he sounded as
15 if he was surprised and he'll somehow figure out
16 a solution to this, but then he said, "You know,
17 Scott State is the CEO and we have to support
18 whatever he wants to do."

19 Q. Did you say anything to him back
20 when he said that?

21 A. No. He said to me that he would
22 speak to other directors and get back to me.

23 Q. Did you ask him to forward your
24 list of chairman responsibilities to the rest of
25 the board?

1 Burton T. Fried

2 A. Yes.

3 Q. Did you ask him to address this
4 issue at the board of directors meeting on
5 November 4th?

6 A. No. I said to him I would forward
7 him the list. He asked is it okay to send it to
8 the other directors. I said absolutely.

9 Q. Anything else that you remember
10 about the conversation with Mr. Simmons?

11 A. No.

12 Q. Was there anybody, by the way, in
13 the room with you when you were making these
14 telephone conversations that we're going to talk
15 about?

16 A. Intentionally not.

17 Q. Anybody within earshot?

18 A. Could be, but I mean, I wasn't in
19 a soundproof room but I didn't have anyone there
20 as a witness as to what I was telling to anyone,
21 because at the moment there was no final
22 decision in this matter and, you know, stuff
23 like this goes out like wild fire and causes
24 distraction and unrest, and there was no reason
25 for that.

1 Burton T. Fried

2 Q. And was this in your office in
3 Westport?

4 A. Yes.

5 Q. Were all these calls on the same
6 day?

7 A. No.

8 Q. Anything else that you remember
9 about the communication with Simmons?

10 A. Not necessarily. I mean, he could
11 have been calling me back. I mean, you know, it
12 wasn't as if I called him -- in fact, it was a
13 case that I called him and he wasn't there and
14 he did call me back. So, you know, not
15 necessarily the call I made to him and he picked
16 up the phone, but that was essentially what
17 occurred.

18 And then it was a few days later
19 that I got a call or John Schnabel sent me an
20 e-mail and asked me to call him. I don't recall
21 which way it went.

22 Q. Did Mr. Schnabel ask you to call
23 him or did you ask Mr. Schnabel to call you, do
24 you remember?

25 A. I spoke to him. He wasn't there

1 Burton T. Fried

2 the first time that I reached out to him and
3 left a message.

4 Q. What do you remember about your
5 conversation with Mr. Schnabel?

6 A. It was identical.

7 Q. Same exact thing?

8 A. Same exact thing.

9 Q. What was Mr. Schnabel's reaction?

10 A. Shock.

11 Q. Tell me, how do you express shock
12 over the telephone?

13 A. He expressed that's unbelievable.
14 In so many words, these people are a bunch of
15 idiots. I don't know if he used the word
16 "idiots," but something similar.

17 "The whole purpose of making this
18 investment, a critical element in my making this
19 investment, was your continuity in the
20 management of the business and your presence.
21 I'm going to straighten this out. I oppose this
22 and I'll get back to you."

23 Q. And then you may have testified to
24 this already, but refresh my recollection, did
25 he get back to you?

1 Burton T. Fried

2 would.

3 So go.

4 Q. Mr. Simmons had mentioned the
5 concept of a consultancy agreement on
6 November 2nd, as you said, right?

7 A. In an e-mail.

8 Q. So the letter that was sent by
9 Mr. Wigdor on the 15th, your testimony isn't
10 that they -- that letter was in retaliation
11 because Mr. Simmons had already spoken about
12 those terms back on November 1st -- 2nd, right?

13 MR. WIGDOR: Objection.

14 You can answer.

15 A. He suggested that that was what
16 the board wanted to do, but he did not do it
17 until the day after a complaint by my attorney
18 of age discrimination was delivered.

19 Q. You resigned from the board of
20 directors on November 30th, 2010; is that
21 correct?

22 A. Yes.

23 Q. Why did you resign?

24 A. That was the last day of my
25 employment with LVI Services. And my election

1 Burton T. Fried

2 to the other boards and responsibilities on
3 other boards of both LVI Services, LVI Parent
4 and -- and other subsidiary boards was only
5 because of my employment at LVI Services. So I
6 sought to extinguish that legal connection.

7 Q. Could you have stayed on the board
8 of LVI Parent and not been an employee of LVI
9 Services?

10 A. It's possible, I guess.

11 Q. Did you want to do that?

12 A. I chose not to have responsibility
13 being on that board when my employment was
14 terminated.

15 Q. What parts of the LVI business
16 were housed in the Westport office?

17 A. Very important aspects of the
18 business.

19 Q. Okay. Tell me what they were.

20 A. My services were performed there.
21 Services of Greg DiCarlo, which provided legal
22 services to all offices throughout the nation
23 and corporate. His other counsel, who also
24 provided legal services in support of
25 Mr. DiCarlo, paralegal who supported their

1 Burton T. Fried

2 Q. I think we were talking about the
3 closing of the Westport office, and forgive me
4 if I asked you this before but when did you
5 first learn that the Westport office was going
6 to be closed?

7 A. I believe it was in a
8 communication from Brian Simmons to me which
9 alluded to the fact they planned to close the
10 Westport office.

11 Q. You said that communication was
12 somewhere in November?

13 A. I believe it was the letter they
14 sent me two days before the board meeting, or
15 the e-mail.

16 Q. Do you know why the Westport
17 office was closed?

18 A. No.

19 Q. Did anybody tell you why the
20 Westport office was closed?

21 A. No.

22 Q. Do you know who decided that the
23 Westport office should be closed?

24 A. No.

25 Q. Do you know when that decision was

1 Burton T. Fried

2 taken?

3 A. No.

4 Q. Is it your belief that the office
5 was closed because you complained about
6 discrimination?

7 A. I believe that it was a factor
8 in -- in closing the office and dismissing my
9 daughter and using the closing of the Westport
10 office as an excuse for the retaliation against
11 her because of the acts of my complaints of age
12 discrimination.

13 Q. Was your daughter -- your daughter
14 was selected for the reduction of force; is that
15 correct?

16 MR. WIGDOR: Objection.

17 Q. Your daughter was selected for
18 termination?

19 A. I don't know what that means
20 except that I know that her employment was
21 terminated on January 6th.

22 Q. Was she the only employee
23 selected?

24 A. There were four other employees
25 that were terminated.

1 Burton T. Fried

2 CERTIFICATE

3 STATE OF NEW YORK)

4) Ss.

5 COUNTY OF QUEENS)

6 I, NICOLE CANNISTRACI, a Shorthand
7 Reporter and Notary Public within and for the
8 State of New York, do hereby certify:

9 That I reported the proceedings in the
10 within entitled matter, and that the within
11 transcript is a true record of such proceedings.

12 I further certify that I am not
13 related to any of the parties to this action by
14 blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 20th day of May, 2011.

18 Nicole Cannistraci

19 NICOLE CANNISTRACI

20

21

22

23

24

25

Exhibit 13

LVI SERVICES, INC.
80 Broad Street
New York, NY 10004

Date: November 16, 2005

Mr. Burton T. Fried
149 Roseville Road
Westport, CT 06880

Re: Terms of Employment with LVI Services, Inc. and LVI Acquisition Corporation

Dear Burt:

This letter memorializes our discussions as to the material terms of your employment arrangement with LVI Services, Inc. (the "Company") and LVI Acquisition Corporation ("Buyer") following the acquisition (the "Acquisition") of LVI Parent Corp. by Buyer:

Job Title/Responsibilities: You will continue to serve as President and Chief Executive Officer of the Company and Buyer until a replacement President and Chief Executive Officer is hired to oversee and conduct the day to day business of the Company and Buyer. You will be expected to perform such services as are customary for such positions, including such duties and responsibilities as are assigned from time to time by the board of directors (the "Board") of the Company and Buyer. After a new President and Chief Executive Officer is hired, you will serve as the Chairman of the Company and Buyer with primary responsibility for strategic growth.

Compensation: You will receive a base salary of \$750,000 per year, which may be altered to a mutually agreed level following the hiring of a new President and Chief Executive Officer. Your base salary shall be payable in regular installments in accordance with the Company's general payroll practices and shall be subject to customary withholdings.

You will be entitled to receive an annual bonus as determined by the Board in its sole discretion based upon the Company's achievement of budgetary and other objectives set by the Board.

Benefits: You will be entitled to the same benefits as all other senior executives and that you currently enjoy. The Company will, subject to insurability and commercially reasonable cost, maintain (i) a long-term disability insurance policy for you with payout terms comparable to those in the disability policy currently maintained by the Company for you and (ii) a \$1,000,000 life insurance policy for you for which you may designate the beneficiary. You understand and acknowledge that the Company will not maintain the \$5,000,000 key-man life insurance policy that was in place prior to the Acquisition.

You will be entitled to 20 days paid vacation annually, in addition to public holidays upon which the Company is officially closed for business.

The Company shall provide you with an automobile comparable to the Mercedes

\$500 currently leased for you by the Company and reimburse you for expenses related to such automobile including insurance, tolls, parking, maintenance, repairs and gas.

Reimbursement of Expenses: The Company will reimburse you for all reasonable expenses incurred by you in the course of performing your duties, which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

Repurchase of Equity As will be provided in your Executive Securities Agreement, in the event of your death, at the election of your legal representative, Buyer will repurchase for cash the common and preferred stock of Buyer you acquire at the time of the Acquisition at fair market value subject to any restrictions in the Company's credit agreements.

Office You will work in the Company's New York city office two days a week and three days a week in an office maintained by the Company in Westport, Connecticut.

After your transition from President and Chief Executive Officer to Chairman, you will work five days a week in Westport, Connecticut. The Company will maintain the current office in Westport, Connecticut or an office with similar facilities at substantially the same rent reasonably acceptable to you in Westport, Connecticut.

We look forward to your continued relationship with the Company. If these terms and conditions are acceptable to you, please sign below to confirm and return this letter to us at your earliest convenience.

Very truly yours,

LVI SERVICES, INC.

BY: Stu R. Brown
Name: Steven R. Brown
Title: Vice President

ACCEPTED AND AGREED
THIS ____ DAY OF NOVEMBER 2005:

Burton T. Fried

CH114382138.4

\$500 currently leased for you by the Company and reimburse you for expenses related to such automobile including insurance, tolls, parking, maintenance, repairs and gas.

Reimbursement of Expenses: The Company will reimburse you for all reasonable expenses incurred by you in the course of performing your duties, which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

Repurchase of Equity As will be provided in your Executive Securities Agreement, in the event of your death, at the election of your legal representative, Buyer will repurchase for cash the common and preferred stock of Buyer you acquire at the time of the Acquisition at fair market value subject to any restrictions in the Company's credit agreements.

Office You will work in the Company's New York city office two days a week and three days a week in an office maintained by the Company in Westport, Connecticut.

After your transition from President and Chief Executive Officer to Chairman, you will work five days a week in Westport, Connecticut. The Company will maintain the current office in Westport, Connecticut or an office with similar facilities at substantially the same rent reasonably acceptable to you in Westport, Connecticut.


We look forward to your continued relationship with the Company. If these terms and conditions are acceptable to you, please sign below to confirm and return this letter to us at your earliest convenience.

Very truly yours,

LVI SERVICES, INC.

BY: _____
Name: _____
Title: _____

ACCEPTED AND AGREED
THIS 11th DAY OF NOVEMBER 2005.


Burton T. Fried

CHN\4285122.4

Exhibit 14



Contact:

Amy McGahan
Dix & Eaton
216-241-3027
amcgahan@dix-eaton.com

Burton T. Fried
LVI Services
212-951-3661
bfried@lviservices.com

FOR IMMEDIATE RELEASE

LVI SERVICES NAMES ROBERT A. McNAMARA AS PRESIDENT AND CEO

*Executive to lead LVI through continued growth into new markets and geographies;
Burton T. Fried to play active role as Chairman to support company's expansion*

NEW YORK – July 13, 2006 – LVI Services Inc., the nation's largest remediation and facility services firm with more than 30 offices across the country, announced today that Robert A. McNamara has joined the company as President and Chief Executive Officer. Burton T. Fried, 66, who has held these positions since 1989, has become Chairman and will continue to play an active role in supporting the company's growth in its current markets, the acquisition of complementary businesses and its expansion into new geographic areas.

"Bob has outstanding business acumen and experience in operating billion-dollar-plus businesses, as well as a track record of successful leadership involving projects of tremendous magnitude," Fried said. "His client focus and team orientation will help stimulate the continued profitable growth of LVI. I look forward to working closely with him to take LVI to the next level."

McNamara, 52, held senior positions with Fluor Corporation for the past decade, including responsibility for major businesses serving the industrial and chemical markets. Fluor, a *Fortune* 500 company with annual revenues of \$13.2 billion in 2005, provides services on a global basis in the fields of engineering, procurement, construction, operations, maintenance and project management.

Brian P. Simmons, a Partner with the private equity firm Code Hennessy Simmons LLC, which has a major investment in LVI, said, "Bob McNamara brings distinct perspectives, management strengths and significant experience that will complement those of Burt Fried, who has been the driving force behind LVI's rapid growth. Burt has positioned LVI well for future growth through internal expansion and key acquisitions. They will make an outstanding team for the future."

McNamara most recently served Fluor as a Senior Group President responsible for Fluor China and for overseeing strategic planning and global project execution systems for all business lines. In previous positions as a Group President, he was responsible for various engineering, procurement and construction groups with annual revenues up to \$2.6 billion. The groups' worldwide market focus included chemicals, manufacturing, mining, highways, roads, bridges, tunnels, rail, microelectronics, pharmaceutical, biologics, consumer products, automotive and metals.

Earlier in his career, McNamara spent 18 years with Marshall Contractors Inc., including serving as its President and Chief Operating Officer. The privately held construction management business grew from \$3 million in annual revenues in 1977 to more than \$700 million in 1996, when it was acquired by Fluor.

McNamara, a board member of Asyst Technology (Nasdaq: ASYT), earned a bachelor's degree in economics from Brown University, Providence, R.I.

About LVI Services

LVI Services Inc. is the United States' leading provider of a wide array of integrated facility services, including environmental remediation, demolition and related services for commercial, industrial, multi-family residential and governmental facilities. LVI focuses on projects involving asbestos, lead paint, mold, infection control, hazardous materials, emergency and disaster services, and demolition. Founded in 1986, LVI has more than 30 offices across the United States, is licensed in every state, and is experienced in responding to natural and manmade disasters around the world. The company's annual revenues exceed \$380 million. For more information, visit www.lvisevices.com.

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Exhibit 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BURTON T. FRIED,

Plaintiff,

v.

LVI SERVICES, INC.; LVI PARENT CORP.; CODE
HENNESSY SIMMONS LLC d/b/a CHS PRIVATE
EQUITY V LP; APOLLO INVESTMENT CORP.;
SCOTT E. STATE, in his official and individual
capacities; BRIAN SIMMONS, in his official and
individual capacities; RAJAY BAGARIA, in his
official and individual capacities; GERALD J.
GIRARDI, in his official and individual capacities,

Defendants.
----- X

10-CV-9308 (JSR)(JCF)

**DECLARATION OF
BURTON T. FRIED**

I, Burton T. Fried, pursuant to 28 U.S.C. §1746, declare and state as follows:

1. I am the Plaintiff in the above-captioned action. I am the former General Counsel, President and Chief Executive Officer, and Chairman of Defendant LVI Services, Inc. ("LVI"). I was admitted to practice law in the State of New York in 1964. I have personal knowledge of the facts set forth herein and submit this declaration in opposition to Defendants' motion for summary judgment.

2. I began working for LVI in 1986 and worked for the company until I was fired in November 2010. From approximately 1989 through November 2010, I was the President and CEO and/or Chairman of LVI.

3. While Robert McNamara was President and CEO of LVI from approximately July 2006 through approximately April/May 2010, I was Chairman of LVI. During this time, I worked on behalf of LVI and its subsidiaries in New York City and to the best of my recollection, my work included, but was not limited to, the following:

- (a) A meeting in New York City with counsel to the City of New York to secure approval by the City of New York to a Vendex Listing sought by an LVI subsidiary. As a result of my efforts, the subsidiary secured a Vendex Listing and was able to bid on the Hudson Yards project in New York City, and was subsequently awarded the project.
- (b) A meeting in New York City with Defendant Scott State to discuss entering into an agreement in which an LVI subsidiary would serve as the subcontractor on two large projects which Mr. State's client sought to bid involving the U.S. Department of Energy. As a result of my efforts at this meeting, the subsidiary entered into the agreement and two projects were bid by Mr. State's client with the subsidiary as the subcontractor.
- (c) A meeting in New York City with Mr. McNamara and a company called DEMCO to discuss the role of an LVI subsidiary as a subcontractor of DEMCO in connection with a project involving the remediation and demolition of Yankee Stadium. The subsidiary became a subcontractor to DEMCO for the remediation and demolition of Yankee Stadium.
- (d) A meeting in New York City with Mr. McNamara to discuss outstanding monies owed to an LVI subsidiary from DEMCO involving the remediation at Yankee Stadium. During that meeting, a payment schedule with DEMCO was negotiated for payment of arrears due and the terms for the performance of demolition at the site were agreed upon.
- (e) A meeting in New York City with an attorney from Arent Fox LLP to discuss potential ERISA violations allegedly caused by the work performed by LVI's outside administrator.
- (f) A meeting in New York City with an attorney from the office of the Inspector General of the New York City School Construction Authority to approve the pre-qualification of an LVI subsidiary to bid on projects involving New York City schools. As a result of my efforts, the pre-qualification was ultimately approved and the subsidiary was able to bid on these projects.
- (g) Multiple meetings in New York City with representatives from the New York County District Attorney's Office and the U.S. Attorney for the Southern District of New York to assist them in the investigation of the events surrounding the bidding which led to a contract with another contractor for the performance of work at 130 Liberty Street, and the deaths of two fireman during the course of that work. An LVI subsidiary had bid that work, was awarded the contract, but withdrew from the project. After the deaths of the two firemen, the subsidiary was awarded a contract to complete the work.

- (h) A meeting in New York City with the CEO of Charys Holding Company, Inc. to negotiate a payment schedule for approximately \$12 million owed to LVI subsidiaries. As a result, a payment schedule was agreed upon at the meeting.
- (i) A meeting in New York City with Asset Recovery Group, Inc. to negotiate a \$5 million remediation contract for a project involving a Pratt & Whitney facility.
- (j) A meeting in New York City to interview a candidate for a Regional Manager position within the LVI organization.
- (k) A meeting in New York City to interview a candidate for a senior management position within the LVI organization.
- (l) A meeting in New York City with New Mountain Capital, LLC, a private equity fund, to discuss its interest in purchasing LVI to accomplish a recapitalization and loan restructuring.
- (m) A meeting in New York City with Apollo Investment Corporation to discuss issues in connection with the restructuring of LVI.

4. During the same time frame, I also, on almost a daily basis, called and/or emailed personnel at LVI's New York City office about LVI-related projects in New York City and/or about issues involving the operations of LVI at its New York City office including, but not limited to, accounts receivable, personnel and legal matters.

5. During the same time frame, I also worked on matters for several LVI-related projects in New York City. For example, I reviewed the contracts for projects involving Yankee Stadium, 130 Liberty Street, and was involved in the resolution of a jurisdictional dispute initiated by the Iron Workers union at the 130 Liberty Street project.

6. After Mr. McNamara resigned as President and CEO in May 2010, I assumed his former role and became interim President and CEO of LVI. From approximately May 2010 through approximately September 2010, I continued to work on behalf of LVI and its subsidiaries in New York City and to the best of my recollection, my work included, but was not limited to, the following:

- (a) A meeting in New York City with Turner Construction Company ("Turner"), Madison Square Garden officials and their consultants in connection with a project involving the renovation of Madison Square Garden ("MSG Project") to discuss scope of work and contract issues.
- (b) A meeting in New York City with Turner, MSG Project officials and their consultants to discuss pricing of the MSG Project.
- (c) A meeting in New York City in connection with the MSG Project with Turner, MSG Project officials and their consultants to answer questions regarding the historical integrity and current business practices of LVI and its subsidiaries.
- (d) A meeting in New York City with Turner in connection with the MSG Project to sign the contract for the project. As a result of my efforts, LVI and/or its subsidiaries employ up to approximately 700 workers in connection with the MSG Project.
- (e) A meeting in New York City with attorneys from Sidley Austin LLP, and other parties with their attorney, regarding a dispute about the obligation of LVI to pay the balance of a purchase price for a company that an LVI subsidiary purchased.
- (f) A meeting in New York City with Russell Reynolds Associates to discuss the search for a President and CEO for LVI.
- (g) A meeting in New York City with American International Group to discuss with its insurance and surety executives the status of the recapitalization and loan restructuring, and current financial results of LVI.
- (h) Multiple meetings in New York City with Avisco, Inc. to negotiate a strategic alliance between LVI and Avisco, Inc. in order to secure projects.
- (i) A meeting in New York City with Helix Enterprises to negotiate a strategic alliance between LVI and Helix Enterprises in order to secure projects.
- (j) A meeting in New York City with a consultant to discuss how LVI could secure projects in Haiti.
- (k) A meeting in New York City with a New York based building owner to secure a multi-million dollar project for an LVI subsidiary. The subsidiary was subsequently awarded the project.
- (l) Multiple meetings in New York City to interview candidates for the LVI President and CEO position.
- (m) A meeting in New York City with an owner of an environmental management firm to discuss potential business opportunities for LVI.

- (n) A meeting in New York City with representatives of DEME to discuss a potential strategic alliance in order to secure projects.
- (o) A meeting in New York City with candidates for New York City based management positions within the LVI organization.

7. During the same time frame, I also, on almost a daily basis, continued to call and/or email personnel at LVI's New York City office about LVI-related projects in New York City and/or about issues involving the operations of LVI at its New York City office including, but not limited to, accounts receivable, personnel and legal matters. Moreover, I worked with Studley, a commercial real estate broker in New York City, by telephone and email in efforts to secure new office space for the New York City office of LVI. In addition, I had weekly conference calls with the on-site management of the 130 Liberty Street project to discuss project-related issues.

8. While Chairman, and interim President and CEO, I also met with representatives of Arch Surety in New York City on an annual basis.

9. Other than me, no other member of senior management was fired by LVI.

10. I was paid by the New York City office from its New York City controlled bank account.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2011

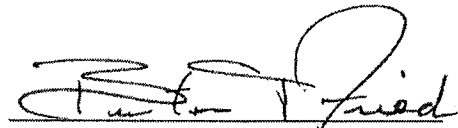

BURTON T. FRIED

Exhibit 16



Fw: BT Fried Compensation
Burton Fried to: Kamal Sookram

05/13/2010 06:45 AM

History: This message has been replied to.

Kamal:

Please increase my annual compensation to rate of \$750,000 per year commencing May 15th. Print copy of this e-mail with below approval for your records.

Burt

Burton T. Fried
Chairman/CEO
LVI Services Inc.
877 Post Road East
Suite # 4
Westport, CT 06880
Phone: (203) 222-0584
Fax: (203) 222-2227
bfried@lviservices.com

EXP-05/16/10

[Handwritten signature]
5/18/10

[Handwritten signature]
5/30/10

----- Forwarded by Burton Fried/New York/Lviservices on 05/13/2010 06:43 AM -----

From: "Simmons, Brian P." <BSimmons@chsonline.com>
To: <BFried@lviservices.com>
Cc: "Hogan, Robert" <RHogan@chsonline.com>, "George, Marcus J." <MGeorge@chsonline.com>, "Lester, Laura" <LLester@chsonline.com>, "Hennessy, Daniel J." <djhennessy@chsonline.com>, "Smith, Jeffrey N." <jnsmith@sidley.com>
Date: 05/12/2010 05:05 PM
Subject: RE: Comp

Confirmed. You are earning every penny of it.

From: BFried@lviservices.com [mailto:BFried@lviservices.com]

Sent: Wednesday, May 12, 2010 4:05 PM

To: Simmons, Brian P.

Cc: Hogan, Robert; George, Marcus J.; Lester, Laura; Hennessy, Daniel J.; Smith, Jeffrey N.

Subject: Re: Comp

Thanks, Brian. Compensation would return to \$750,000

Burton T. Fried
Chairman/CEO
LVI Services Inc.
877 Post Road East
Suite # 4
Westport, CT 06880
Phone: (203) 222-0584
Fax: (203) 222-2227
bfried@lviservices.com

Exhibit 17

**ATTORNEY CLIENT PRIVILEGE
AIC MEMORANDUM**

To: Interested Parties
From: Rajay Bagaria, Jerry Girardi, Teddy Reynolds
Cc: Emil Buchman, Joseph Glatt
Date: June 11, 2010
Re: LVI Services, Inc.
 Proposed Restructuring Overview

I – Situation Overview

In November 2005, AIC invested \$43.0 million of senior subordinated notes and \$2.5 million of equity to support the buyout of LVI Services, Inc. (“LVI” or the “Company”) by Code Hennessy & Simmons (“CHS” or the “Sponsor”). LVI is a leading provider of building facility services including asbestos abatement, lead abatement, mold remediation, emergency disaster response, interior and structural demolition and other specialty contracting services to a broad range of commercial, industrial and institutional clients located throughout the United States. The Company operates through 25 regional branch locations nationwide with more than 3,000 employees, a large portion of which are hourly workers. While LVI experienced challenges almost immediately following our initial investment (discussed in more detail below), the Company was still able to generate \$34-\$35 million of EBITDA in both 2007 and 2008. However, the current economic downturn and its impact on the Company’s core commercial end markets has materially impacted 2009 and YTD 2010 financial results. For the LTM period ended April 30, 2010, LVI generated revenue and EBITDA of \$237.6 million and \$18.7 million (7.9% margin), respectively.

Despite financial underperformance, the qualities that initially attracted us to invest in LVI are still largely intact. Over a two decade period, the Company has proven its ability to profitably grow both organically and through acquisitions. Furthermore, the Company’s safety record is amongst the best in the industry, enabling it to obtain work on many high profile projects including the Pentagon, 9/11 clean-up, NASA Kennedy Space Center, 130 Liberty Street (Deutsche Bank building in lower Manhattan) and, a more recent award, Madison Square Garden. In its Emergency Response business segment, LVI is able to mobilize quickly and provide meaningful man-hours which it bills at attractive margins. For example, when hurricanes Katrina and Rita struck the Gulf in 2005, LVI nearly doubled its workforce to capitalize on the clean-up opportunity, which created over \$70 million of incremental EBITDA over a two year time period. This business line contributes insignificant earnings in the LTM period, but provides a valuable option on the upside. We believe LVI also possesses high quality managers, which is particularly important in contract estimation. Regional branch management largely remains intact from the initial investment. With the addition of Bob McNamara as CEO, the Company increased its focus on improving its safety record which allowed LVI to diversify away from commercial construction / remediation projects and penetrate the energy, environmental and industrial industries. For all these reasons, we continue to believe the Company has reason to exist and that earnings will improve with economic growth.

Despite being a clear industry leader with a demonstrated track record, LVI has been a challenging investment for CHS since the initial LBO. When LVI was purchased in late 2005, the Company was benefitting from a massive amount of Katrina/Rita hurricane related clean-up work. By the end of 2005, LVI was billing \$1 million of clean-up related revenue a day in Louisiana and Texas (at 30-35% margins), enabling it to produce \$66 million of EBITDA that year. Based on the widespread destruction in the region, management projected clean-up related work to take months if not years to complete and forecasted 2006 and 2007 EBITDA of \$104 million and \$76 million, respectively. For a variety of

reasons, most notably anticipated FEMA clean-up related funds not being released and Louisiana political bureaucracy, this projected revenue and earnings growth never materialized for LVI.

The Company's capital structure and covenants from the initial 2005 LBO were predicated on a meaningful level of near term debt paydown from the projected hurricane clean up work. When this level of work did not materialize, the Company breached covenants in late 2006 and was forced to amend its debt agreements to provide for higher interest rates in exchange for covenant headroom. Since this time, the Company has performed relatively well and won high profile projects including the remediation and demolition of the Deutsche Bank building which allowed LVI to maintain earnings in 2008 despite the dramatic drop off in its core commercial end markets. However, beginning in 2009 the economic downturn has begun to more materially impact earnings and has not been able to be offset by other similarly large projects. As such, in late 2009 the Company commenced discussions with its lenders and other key constituent groups around a more comprehensive balance sheet restructuring.

Based on current LTM EBITDA of \$18.7 million, which we view as near "trough" levels, the Company is levered 6.4x through \$119 million of funded net senior debt, with our subordinated notes financing through 9.1x. Given the number of constituents that must be dealt with, the LVI restructuring is complex and further complicated by our inability to use bankruptcy as a resolution mechanism. One of our challenges has been dealing with a roughly \$40 million working capital claim (amount under dispute) owed to the prior owners of the business (including current management) related to the receivables delivered on the closing date of the initial LBO for hurricane clean up work. As LVI began to underperform in 2006 and sought covenant relief, the Company's lenders restricted any further payments on this claim¹. Additionally, there is an \$8.5 million seller note issued to the prior owners of an existing subsidiary of LVI, the Mazzochis, related to the acquisition of the Mazzochi demolition business by LVI in 2007. This claim has a guarantee from the LVI operating company and as such, even though it is expressly subordinated to AIC's claim, makes an out-of-court restructuring even more difficult.

After months of intense discussions, and the untimely resignation of CEO Bob McNamara, it appears we are close to a broad restructuring solution which we highlight in greater detail in this memo. In summary, this restructuring involves a debt-to-equity conversion of AIC's existing \$52 million subordinated debt position, a \$25 million injection of new money (\$15 million from CHS; \$10 million from AIC) and the conversion of \$15 million of senior debt to common equity from a large senior lender (Falcon Investments) who purchased the debt at distressed levels over the past year. The combination of these actions, along with other payments and amendments as outlined in this memo, provide for a restructured entity levered to 4.6x (through the senior debt) and creates the Company at 6.8x - 7.2x (depending on how we settle certain claims). The ownership structure of this restructured entity will be 37.5% CHS, 37.5% AIC and 25.0% Falcon (prior to dilution from management options).

In summary, we believe the new money investment is attractive in its own right and critical to obtaining any recovery on our mezzanine. The amount of ownership provided to AIC creates an opportunity to make \$50-\$60 million of proceeds in 3-4 years (assuming EBITDA reverts to \$35-\$40 million). Should EBITDA only rebound to \$25 million, a level we would view as a reasonably conservative case, our recovery would still be \$30 million, which is attractive compared to the alternatives.

¹ The initial working capital claim was for ~ \$50 million. LVI paid \$25 million of this claim up until the time it was restricted from paying any more by its lenders. With interest, the remaining \$25 million portion of the claim has accreted to ~ \$40 million.

II – Restructuring Overview

Sources and Uses

The table below details the sources and uses for the proposed LVI restructuring. The restructuring for LVI importantly contemplates: \$25 million of new cash equity (\$15 million from CHS; \$10 million from Apollo), \$15 million of senior debt (to equity) conversion by Falcon, \$52 million of subordinated debt conversion by Apollo, and the use of \$17 million of balance sheet cash to repay the revolver and various other expenses. The new equity will be used to repay senior debt through a dutch tender. The charts below show the senior debt retired at par, however we expect to take out loans in the 85-90 context (the term loan is currently quoted in the low 70s though there has been little trading activity).

(\$ in millions)			
Sources	Amount	Uses	Amount
New Equity (net of 5% Equity Fee)	\$25.0	Paydown Revolver	\$9.5
Balance Sheet Cash	17.0	Reduction of Senior Term Loan - Cash Paydown	25.0
Conversion of Falcon Senior Debt Claim	15.0	Reduction of Senior Term Loan - Falcon Conversion	15.0
		Payments to Key Management (W/Cap Claim Related)	4.0
		Senior Debt Amendment Fee	0.9
		Fees & Expenses (Legal, Financial Advisor, Etc.)	2.6
Total Sources	\$57.0	Total Uses	\$57.0

Existing and Pro Forma Capitalization

LVI's restructured balance sheet will have total debt reduced by approximately \$100 million, thereby providing a permanent solution to its capital structure problems. Cash-pay debt will be reduced to 4.6x, which implies a relatively healthy interest coverage ratio of 2.0x. While we show the full amount of the Mazzochi claim – to be conservative – we expect this claim to be eliminated for some lesser amount for reasons discussed later in this memo. Pro forma liquidity stands at \$19 million, which combined with FCF is enough to support working capital as the business rebounds.

(\$ in millions)	Estimated at Closing			Pro Forma Adjustments (\$17.0)	Pro Forma for Restructuring		
	At Closing	x LTM EBITDA (net)	x LTM EBITDA - CapEx (net)		Pro Forma	x LTM EBITDA (net)	x LTM EBITDA - CapEx (net)
Cash	\$18.0				\$1.0		
Revolver	\$9.5				\$0.0		
Term Loan	115.9			(\$9.5)	75.9		
Equipment Loans / Cap. Leases	11.5			(40.0)	11.5		
Total Senior Debt	\$134.9	6.4x	7.7x		\$87.4	4.6x	5.6x
Apollo Sub. Debt	\$1.6				0.0		
Mazzochi Seller Note	8.5	9.1x	11.1x	(\$1.6)	8.5		
Total Debt	\$197.0	9.6x	11.6x		\$95.9	5.1x	6.2x
Accrued Working Capital Claim due to Sellers	38.0			(38.0)	0.0		
Aggregate Contributed Equity to Date	86.0			(86.0)	0.0		
New Contributed Equity	0.0			40.0	0.0		
Total Capitalization	\$321.0	16.2x	19.7x		\$135.9	7.2x	8.8x
LTM 4/30/10 EBITDA	\$18.7						
LTM 4/30/10 CapEx	3.3						
Estimated PF Interest Expense	9.3						
Pro Forma Coverage Stats							
EBITDA / Interest	2.0x						
EBITDA - CapEx / Interest	1.7x						
				Pro Forma Available Liquidity			
				Cash	\$1.0		
				R/C Availability	18.0		
				Total PF Liquidity	\$19.0		

Ownership

The following chart outlines the ownership split of LVI post-restructuring. Ownership is based on a recapitalized value of 6.8x - 7.2x depending on the final amount of the Mazzochi claim. At present, our notes finance from 6.4x to 9.1x (net leverage). Our view has been that we are the fulcrum but multiples are stretched particularly when factoring in the \$7.5 million of payments required to compensate management for prior claims, the Mazzochi claim of up to \$8.5 million, which while contractually junior is structurally senior and therefore cannot be flushed out-of-court, and other restructuring costs. Consistent with this thinking – and our desire not to provide the entire \$25 million of new money required – we obtain modest value for our mezzanine conversion but our recovery is primarily driven by the new money investment. Given that we have had to take a significant haircut in order to facilitate an out-of-court consensual restructuring, we required that Falcon also convert its existing senior debt into equity at a 33% discount, which they argued strongly against. To illustrate the difference - while CHS's \$15 million equity investment provides 37.5% ownership, Falcon's \$15 million conversion only provides 25% ownership. This is what AIC achieves through its \$10 million investment. We believe the ownership percentages below are fair and provide AIC a chance for a full recovery, which is discussed later in this memo.

Owner	Amount	Common Consideration	Common Value	Pre-Mgmt Options	Post- Mgmt Options
AIC Mezz	51.6	10%	5.0	12.5%	11.3%
AIC New Money	10.0	100%	10.0	25.0%	22.5%
AIC TOTAL	61.6		15.0	37.5%	33.8%
CHS New Common	15.0	100%	15.0	37.5%	33.8%
Falcon	15.0	67%	10.0	25.0%	22.5%
Mgmt Options				0.0%	10.0%
Total			40.0	100.0%	100.0%

Board Composition

LVI's Board will consists of: Burt Fried, Chairman / former CEO, 2 seats for each Apollo and CHS, 1 seat for Falcon and 2 independent seats, which will be nominated by majority shareholders. We expect the independent seats to remain held by the existing directors who are Richard Ferrucci (owns an insurance brokerage firm, secured the Arch bonding relationship) and Robert Buck (Chairman/CEO of Beacon Roofing, a former CHS portfolio company). The shareholders agreement is fairly straightforward and provides for certain veto rights (which each owner maintains) and almost all major decisions to be made by majority vote.

Owner	Board Seats
Apollo	2
CHS	2
Falcon	1
Independents	2
CEO	1
Burt Fried	1
	9

III – Key Constituents

Excluding Apollo and CHS, four primary constituent are critical to achieving the contemplated restructuring. These are:

1. Falcon Investments, who owns \$37 million (or 23%) of the first lien
2. Management, who importantly are owed \$8 million from the disputed “working capital” claim
3. Nick Mazzochi, who has an \$8.5 million note (at an opco, but subordinated to AIC’s mezzanine)
4. The senior lenders – we need 100% to vote in favor given maturity extension

Below is a more detailed discussion of where we stand with each key constituent.

1. Falcon Investments

Falcon Investments was formed as a private equity fund in 2000 by Sandeep Alva and William Kennedy who worked previously together in the mezzanine group of John Hancock Life Insurance Company. Falcon is currently investing its third fund, has \$1 billion of assets under management, is based in New York and targets \$10-\$75 million sub debt and equity investments. Throughout the LVI process, Falcon has been very difficult to deal with and oftentimes unreasonable. Rafael Fogel is the partner responsible for the investment. Prior to joining Falcon, “Rafe” was a high yield manager at SunAmerica Investments.

Falcon is highly familiar with LVI, having held a minority position in the Company under the previous ownership (Blue Point). Through secondary purchases, Falcon today holds \$37 million of the first lien which constitutes 32% of the term loan (but its vote is only 23% when including the revolver). Reaching a deal with Falcon was therefore a first step and took extensive discussions over months. The deal with Falcon, which has it converting \$15 million, will leave them owning 19% of the senior facility post restructuring. This assumes Falcon does not tender any of its position in the dutch auction.

While most aspects of our deal with Falcon have been negotiated, we are concerned that Falcon may seek to revisit its economics if a deal with the senior lenders materially changes or the settlement with Mazzochi takes a turn for the worse. At present, this does not seem like it will be the case.

2. Management / Working Capital Claim

The acquisition consideration for LVI contained a deferred payment, which would be made upon cash receipt of certain accounts receivable. The Company made \$25 million of the estimated \$50 million of payments in connection with this working capital adjustment, but as the business underperformed (and creditors prohibited further cash distributions), LVI reached an agreement with the previous owners to defer payment indefinitely. That amount has since accrued to almost \$40 million and sits at LVI Acquisition Corp, a holding company.

We’ve included a schedule of the amounts owed to different constituents under the working capital adjustment on the next page. Blue Point (seller of LVI to CHS) is the largest holder with \$22.8 million exposure. To date, we have not had any discussions about this claim with Blue Point. Though structurally and contractually junior to the new equity, this claim is disclosed in LVI’s audited financials and therefore attracts attention with sureties. To clean it up, we would be prepared to offer a small amount of out-of-the-money warrants struck at a value after which CHS and Apollo achieve a full recovery. The claim with management is more difficult as it extends throughout the organization and encompasses all key employees including branch managers. Management, and in particular Burt Fried, has expressed a strong desire to be able to obtain this value over time.

We cannot provide compensation to one party of a claim and not the others. However, we do not want to risk jeopardizing employee morale or risk defections over this issue. As such, we plan to make a \$4 million payment to the management at closing in connection with achieving a successful restructuring. Management will be able to obtain an additional \$4 million (paid equally over 2 years) if it can grow EBITDA to certain agreed upon targets – these earn-outs would be permitted “restricted payments” under the credit agreement. We believe we are close to a deal with management however tax considerations still need to be vetted.

<u>Summary</u>	
Blue Point	\$ 22,834,193.71
DuPont/Wilton/Sürchting	2,779,230.65
Falcon	4,410,517.92
Ed Pleasants	217,504.97
Mgmt Employees – current	8,869,313.24
Mgmt Employees - former (*)	883,857.54
	<hr/>
	\$ 39,994,618.03

3. Mazzochi Claim

In 2007, LVI acquired Mazzochi Wrecking, Inc. a NJ based provider of structural demolition services (fifth largest in the U.S.). The acquisition consideration consisted of approximately \$12 million of cash, \$5.4 million of assumed debt and \$10 million in deferred consideration in the form of a note that sits at LVI Mazzochi Wrecking, a subsidiary of LVI Services, the borrower. The obligation is at an operating company and therefore is structurally senior to the term loans and mezzanine. It is also guaranteed by LVI Services and therefore derives credit support from all the other operating companies. However, the note is expressly subordinated to debt at LVI Services and therefore would be treated as a junior claim in bankruptcy. The note amount is approximately \$8.5 million.

Prior to its sale to LVI, Mazzochi was engaged in an FBI undercover investigation aimed at rooting out a corrupt Newark city official. Effectively the official was awarding business to Mazzochi in exchange for Mazzochi subcontracting with firms that would provide the official with compensation. We’ve been told that Mazzochi came under FBI investigation after having conspired with the official (a criminal offense). In exchange for leniency, Mazzochi agreed to cooperate. However in the process of setting up the official, he won several jobs that effectively inflated earnings. No disclosure was made of this during the sale process, which is a clear breach of certain representations and warranties in the purchase agreement. The investigation was made public only recently and LVI is seeking to cancel the remaining note.

Mazzochi believes he is entitled to the full amount of the claim. Even if he ultimately agrees to the breach, there is a question of how to quantify the damages. We have some thoughts but in short believe this could take some time to resolve, particularly if Mazzochi chooses to litigate versus settle. The Company has a strong position and will attack all consideration paid to Mazzochi. The next step however is for LVI and Mazzochi’s lawyers to see if they can make any progress on a settlement. Given how long this will likely take to resolve, we plan to close with the \$8.5 million liability remaining on the balance sheet.

4. The Senior Lenders

There are effectively two groups of senior lenders – one with revolver commitments and the other with funded term loan exposure. There is little crossover holdings which has been problematic because each group has a different motivation. The revolver lenders currently have \$25.5 million outstanding in the form of funded loans and letters of credit under a \$45 million committed facility. This group recognizes the need to continue extending revolver availability, but their goal is to reduce exposure to the maximum

extent possible. Complicating matters, Dymas/Cerberus is the second largest holder under the revolver with \$17.5 million. Dymas has been outspoken about their intent to limit future exposure and can hold-up the deal. Other revolver lenders including M&T and CIBC appear more commercially minded. Despite these dynamics, we are actually very close to agreement.

The term loan is held by 13 institutions with Falcon holding the largest amount at 23% and Highland the second largest holder at 10%. Confirmed through our own checkings, outside of these two groups, all investors in the first lien seem highly motivated to complete a restructuring as quickly as possible and the deal we have proposed is attractive to them. The following chart contains a summary of key terms. At this point, we have had several rounds of comments with the first lien, and while a handful of points remain outstanding (capex covenant, additional covenant in the future, minor economic adjustments), we believe we can arrive at a deal materially similar to what is outlined below. To note, the primary risk to a deal with the first lien is that a 100% vote is required given the maturity extension. This gives smaller holders significant hold-up value. Bankruptcy is not a good option to flush these accounts, as we believe it will impede LVI's ability to obtain bonding and compete for new business. We provide an option for these accounts to sell their loan through the dutch tender and would use this pressure to drive consensus.

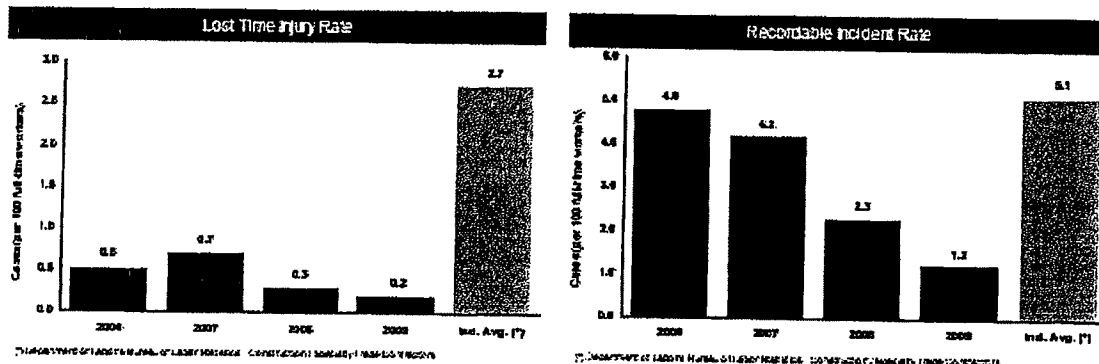
One other item to note, we are contemplating LVI paying a \$400,000 per year management fee. Apollo's share of this would be \$150,000.

Term	Current Credit Agreement	Company Proposal (6/7)
Revolving Credit Commitment	\$45MM	• \$38MM as of the Closing Date; with a reduction to \$35MM anytime LTM does not exceed \$17MM
Maturity	• Revolver: November 16, 2010 • Term Loan: November 16, 2011	• Revolver: September 30, 2013 • Term Loan: March 31, 2014
Amortization	• Quarterly amortization of \$350K through 12/31/10; balloon payments for subsequent quarters	• Quarterly amortization payments of \$150K beginning on March 30, 2011
Term Loan Call Protection	• N/A	• Year 1 - 102; Year 2 - 101 (if paydown is made with proceeds from a debt or equity issuance)
Covenants	• Min FCCR (currently at 1.15x); total leverage (currently at 5.00x w/step-down to 4.90x at 9/30/2010); CapEx not to exceed \$7.5MM	• Min FCCR of 1.00x thru 12/31/2011, 1.15x thereafter; CapEx set at the greater of 120% of projections and \$7.5MM
Pricing	• Based on a leverage grid, currently at P + 4.00% (not including default interest)	• LIBOR + 7.50% if Total Leverage > 3.25x • LIBOR + 4.75% if Total Leverage ≤ 3.25x • 1.75% LIBOR Floor
Sponsor Guaranty	• No longer in effect	• Subject to the conversion of not less than \$15 million of Term Loans to equity on the Closing Date, among other things, no guaranty of the Sponsor of Revolving Loans and Letter of Credit Usage shall be required.
Management Fees	• Up to \$1MM per year, payable in cash	• Up to \$400k per year, payable in cash (so long as FCCR ≥ 1.00x, otherwise shall accrue)
Excess Cash Flow Sweep	• 75% of excess cash flow	• 75% of excess cash flow
Other	• N/A	• Payment of an amendment fee to lenders of 0.75% on the pro forma facility • Payment to certain members of the management team of \$4MM at closing, with the opportunity to earn two additional payments of \$2MM each • Ability to conduct a reverse Dutch auction for a period of no longer than fifteen (15) days after close • Conversion of \$15MM of term loans into equity • Equity contribution of at least \$25MM • Potential consideration given to holders of the Working Capital Adjustment in the form of warrants for common equity

IV – Company and Financial Overview

LVI is the nation's largest environmental remediation, demolition and facility services provider and the only national provider of turnkey remediation and demolition services in the U.S. LVI serves facility owners and construction firms in large and growing end markets including energy, power and industrial, infrastructure, government and institutional – along with its core retail and commercial end markets. The Company leverages its national footprint comprised of 25 regional offices to deliver asbestos abatement, soft and structural demolition, mold remediation, decontamination and decommissioning, fireproofing and on-demand emergency response services to customers across the country. In 2009, LVI completed work on over 4,000 projects with an average contract size of \$66,000.

Along with its bonding capacity (discussed in more detail later in this memo), a key differentiator for LVI is its world-class safety record – which sets it apart from its peers and provides the Company with the opportunity to access a broader range of industrial and other non-commercial customers, including government (federal, state and municipal), leading power utility providers and major oil and gas companies. During 2009, LVI experienced a recordable incident rate of 1.2 cases per 100 full time workers compared to the industry average of 5.1 cases. Furthermore, LVI had a lost time injury rate of 0.2 cases per 100 full time workers as compared to the industry average of 2.7 cases. These safety metrics have been improving over the past several years – driven by a heightened safety focus implemented under prior CEO Bob McNamara. Within the construction services sector, safety metrics are critical to maintain particularly as it relates to workers comp insurance, bonding and public projects.



LVI groups its service offerings into 3 business segments: Remediation, Demolition, and Emergency Response. Each of these three segments are discussed in greater detail in the following pages.

Remediation Segment (45% of 2010E Revenue)

LVI's remediation segment primarily consists of jobs related to the remediation of asbestos, lead and mold as well as specialized services including fireproofing and infection control. LVI has an extensive history of successful abatement projects, with almost 18,000 asbestos abatement projects completed since 2000 and over 50 million recorded man hours related to asbestos and mold removal in the past 20 years. The Company is capable of performing remediation tasks in either non- or partially-occupied buildings and caters to a wide variety of clients, including government buildings, schools, hospitals, hotels, industrial facilities and more. LVI has a proven track record with exceptionally low incident rates and employs the most up-to-date abatement solutions with quality standards exceeding national and industry standards. According to *Engineering News-Record*, LVI is the largest asbestos abatement contractor in the U.S. at almost four times the size of its closest competitor.

As illustrated below, LVT's Remediation segment has been severely negatively impacted by the recent economic downturn, with total segment revenue for 2010 projected at \$125-\$130 million (roughly equal to 2002 total remediation revenue and down from a peak of \$245 million in 2008). It should be noted that the true downturn over the past two years and the impact on the Remediation segment has been somewhat masked by the large 130 Liberty Street abatement project (Deutsche Bank building in lower Manhattan), which contributed \$54 million of remediation revenue in 2008 and \$37 million in 2009. Excluding this one project, "adjusted" revenue for the Remediation segment declined by 15% and 28% in 2008 and 2009, respectively, and is projected to decline by another 8% in 2010. In management's forecast as illustrated in the following pages, total Remediation segment revenue is projected to return to 2003-2005 levels by 2012-2014 due to expected improvement in the core commercial environment.

Remediation Segment

(\$ in millions)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	INITIAL BANK PLAN 2010
REVENUE											
ACM	\$112.6	\$97.0	\$110.8	\$122.7	\$126.3	\$138.4	\$159.8	\$182.2	\$201.1	\$145.4	\$91.1
Lead	6.1	7.4	5.2	4.2	4.2	6.3	10.0	11.5	8.4	4.3	6.6
Mold/Hazmat	0.3	4.5	8.8	18.1	23.8	20.2	19.4	13.7	12.1	8.3	12.8
FP	4.6	5.0	6.4	6.5	9.7	12.1	13.3	16.5	23.0	16.1	15.1
Total Remediation	\$123.6	\$113.9	\$131.2	\$151.5	\$164.0	\$177.0	\$202.5	\$223.9	\$244.6	\$174.1	\$125.6
% Growth	-	-7.8%	15.2%	15.5%	8.3%	7.9%	14.4%	10.6%	9.2%	-28.8%	-27.9%

DIRECT GROSS PROFIT

ACM	\$30.5	\$26.1	\$28.4	\$32.0	\$29.4	\$30.8	\$41.3	\$43.6	\$45.6	\$32.2	\$23.1
% Margin	27.1%	26.9%	25.6%	24.1%	23.3%	22.3%	25.8%	23.9%	22.7%	22.1%	25.4%
Lead	1.8	1.6	1.3	1.3	1.3	1.9	3.0	3.4	2.7	1.3	1.7
% Margin	29.5%	21.6%	25.0%	31.0%	31.0%	30.2%	30.0%	29.6%	32.1%	30.2%	25.8%
Mold/Hazmat	0.1	1.6	3.3	7.2	(1.3)	8.1	6.3	4.1	4.0	2.9	3.6
% Margin	33.3%	35.6%	37.5%	39.6%	-5.5%	40.1%	32.5%	29.9%	33.1%	34.9%	28.1%
FP	1.3	1.3	1.5	1.4	2.3	2.9	3.1	3.8	6.0	3.4	4.1
% Margin	28.3%	26.0%	23.4%	21.5%	23.7%	24.0%	23.3%	23.0%	26.1%	21.1%	27.2%
Total Remediation	\$33.7	\$30.6	\$34.5	\$41.9	\$31.7	\$43.7	\$53.7	\$54.9	\$58.3	\$39.8	\$32.5
% Margin	27.3%	26.9%	26.3%	27.6%	19.3%	24.7%	26.5%	24.5%	23.8%	22.9%	25.9%

Remediation Segment (Excluding 130 Liberty St. Project)

(\$ in millions)	2007	2008	2009	INITIAL BANK PLAN 2010
Total Remediation Revenue	\$223.9	\$244.6	\$174.1	\$125.6
Less: 130 Liberty ACM Revenue	0.0	(54.3)	(37.4)	0.0
"Adjusted" Remediation Revenue	\$223.9	\$190.3	\$136.7	\$125.6
% Growth		-15.0%	-28.2%	-8.1%

Demolition Segment (47% of 2010E Revenue)

Through its Demolition segment, LVI executes both structural and non-structural demolition projects, ranging from selective interior / exterior demolition to large-scale building implosions. In addition, LVI's total turnkey demolition services provide a key competitive advantage as the Company can also perform any required remediation services in advance of demolition (as they did for the 130 Liberty Street Deutsche Bank project and are doing for the Madison Square Garden project). The Company has performed major demolition projects for industrial manufacturing and chemical plants, power plants, retail and commercial facilities, resorts and movie sets and prides itself on its reputation for world class performance, safety and efficiency.

LVI has been expanding its Demolition focus over the past 5+ years as it sought to add a key complimentary product offering to its core abatement and remediation services. The Company accomplished this primarily through acquisitions, including the 2007 acquisition of Mazzochi Wrecking, the premier provider of surgical demolition services in the New York / New Jersey metro area. As such, over the past 10 years LVI has grown its annual demolition related revenue from \$15-\$20 million to over \$100 million.

<u>Demolition Segment</u>											INITIAL BANK PLAN
<u>(\$ in millions)</u>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<u>REVENUE</u>											
Demolition	\$27.3	\$26.4	\$14.9	\$19.0	\$44.5	\$81.4	\$99.9	\$129.5	\$108.5	\$76.4	\$131.5
% Growth	—	-3.3%	-43.6%	27.5%	134.7%	82.5%	22.7%	29.6%	-16.2%	-29.5%	72.0%
<u>DIRECT GROSS PROFIT</u>											
Demolition	3.1	3.5	2.9	3.3	9.1	14.7	21.2	26.7	24.1	18.9	31.1
% Margin	11.4%	13.3%	19.5%	17.4%	20.4%	18.1%	21.2%	20.6%	22.2%	24.7%	23.7%

A primary driver of recent and projected demolition revenue growth relates to LVI's increased focus on and successful penetration of industrial, oil & gas and power utility projects. A major area of upside for the Company relates to these areas – primarily the projected deconstruction and decommission of older coal-fired power plants in the U.S., an initiative well documented and driven by EPA and other air emission regulations being implemented by the current Obama administration. Related to this, LVI recently signed a five year strategic alliance contract with NRG Energy, one of the nation's largest power generators. Under this agreement, LVI will serve as NRG's preferred provider of environmental services and demolition work at its power-generating facilities nationwide. In the very near term, LVI expects to receive a release of a \$10.4 million project for NRG's El Segundo, CA plant related to this initiative, and other facility awards are expected to follow in the near to intermediate term. The total revenue opportunity related to NRG alone is projected by management to be \$40-\$60 million. Besides NRG, LVI has also been in discussions with other large utility companies for similar such work and management believes they are well positioned to secure projects from utilities such as Progress Energy, Duke Energy and AEP. Management estimates that each power plant job is a \$5-\$20 million revenue opportunity.

Emergency Response Segment (8% of 2010E Revenue)

The Company's Emergency Response segment now operates under the NorthStar brand. NorthStar offers professional emergency response and recovery services to customers facing damage and disruption left in the wake of any size disaster. NorthStar leverages LVI's national network of 25 regional offices and more than 3,000 employees to rapidly dispatch teams ready to assist customers in restoring their business safely, cost effectively and on schedule. The self-performing and cross-trained labor force has decades of unmatched experience with all types of industries and challenges and works with the best equipment and technology.

With over 900 million square feet contracted under MSAs, NorthStar is a preferred provider to approximately 50 large customers with holders of significant real estate portfolios, such as retailers and hospitality companies (e.g. Target, Holiday Inn). In addition to the day-to-day non-emergency work (leaks, water damage due to faulty sprinklers, etc.), the MSAs create significant upside opportunity for NorthStar in the event of hurricanes or other significant catastrophes and has allowed LVI to compete with large disaster recovery firms across the nation. For example, the Company generated over \$150 million of aggregate clean-up related revenue related to 2004-2005 hurricanes, and more recently is expected to earn \$5-\$15 million of revenue from the recent flooding in Nashville and Rhode Island. LVI currently has people working in the Gulf on the BP oil spill, and believes this could be material to near-term earnings.

Emergency Response Segment

<u>(\$ in millions)</u>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	INITIAL BANK PLAN 2010
<u>REVENUE</u>											
Emergency Response	0.3	11.4	2.1	1.0	54.9	121.2	22.8	8.1	23.6	14.8	22.8
% Growth	--	3700.0%	-81.6%	-52.4%	5390.0%	120.8%	-81.2%	-64.5%	191.4%	-37.1%	53.6%
<u>DIRECT GROSS PROFIT</u>											
Emergency Response	0.1	3.7	0.9	0.0	27.7	55.0	8.3	3.2	7.7	5.4	7.2
% Margin	33.3%	32.5%	42.9%	4.0%	50.5%	45.4%	36.4%	39.5%	32.6%	36.4%	31.6%

In Management's forecast, Emergency Response is projected to contribute \$15-\$20 million of annual revenue – primarily driven by non-emergency, recurring clean up work under its nationwide MSAs. A major disaster such as a hurricane (or the BP oil cleanup) represents upside to management's projections, but not something we are underwriting for purposes of evaluating the proposed new money investment in LVI. To note, LVI currently has 35 workers involved with the oil spill clean-up and many more on standby. In general it charges \$24 per worker/hour and achieves a 30% contribution margin. The clean-up will eventually involve substantial amounts of additional labor. We estimate that if LVI can ultimately have 500 workers involved with the clean up, clean-up work will provide \$13 million of revenue (over six months) and \$4 million of profit. This provides some idea of the potential upside.

V – Bonding Discussion

LVI must post bonds for all public projects, which represents about 25% of LVI's total business (private projects rarely require bonds). The following chart shows the amounts of bonds issued over the past four years and the amount outstanding as of 3/31/2010. As shown, the average bond is \$700,000 and the related work is generally completed within a few months – as such, this is generally low risk business for sureties. LVI does however obtain bonds for larger projects (e.g., the work at 130 Liberty required a \$14 million bond).

YEAR ISSUED	TOTAL BONDS ISSUED	OUTSTANDING BONDS AS OF 3/31/2010	# OF BONDS ISSUED	AVG. VALUE OF BONDS ISSUED
2010	\$ 4,649,573	\$ 2,236,721	17	273,504
2009	44,488,145	17,777,838	85	523,390
2008	96,255,598	22,931,326	84	1,145,900
2007	86,123,075	4,544,179	122	705,927
2006	69,254,390	35,577	122	567,659
TOTALS	\$ 300,770,780	\$ 47,525,640	430	\$ 699,467

A bond is issued by a surety to effectively protect taxpayer dollars. To use an example, when LVI is awarded a project for \$10 million, Arch (LVI's primary bonding provider) provides the municipality with a \$10 million "performance and payment" bond in their favor. This ensures that if anything were to happen to LVI, the surety would step-in to complete the work. While this rarely occurs, the surety in this situation would hire other contractors to finish the job. Knowing that LVI has built in a 20% margin, the surety has some room to find contractors that might be more expensive. The way bonding exposure is tracked then (shown in the chart above) is based on the remaining value of the contract (as progress is made, bonding exposure is reduced).

LVI today uses primarily Arch Capital (ticker: AGL) and AIG (Chartis) for surety bonds. Though there is no written contract to this effect, which in practicality would not have much meaning as each bond are not drawn like a revolver but based on the merits of each project, Arch has generally allocated \$200 million of exposure to LVI. While LVI never needs this much in bonding, the size is an important differentiator in the market (show of strength). Arch has been working with LVI for 7-8 years; the relationship was sourced and still managed by Richard Ferrucci, who sits on LVI's board (and owns and insurance brokerage company). AIG has been working with LVI for 20 years; because their commitment to the surety business has wavered, LVI prefers to do more business with Arch.

Surety economics are seemingly low – Arch makes approximately 1% on outstanding bonds –this is because the risk and capital requirements are low. A surety has never lost money with LVI in its operating history. What sureties like to see from companies like LVI are a consistent track record in completing projects profitability, ideally the work is related to shorter-term projects and the contractor must have balance sheet strength. Arch wants comfort that LVI can withstand losses from an occasional unprofitable contract or the economic downturn. When LVI was acquired by CHS, Arch had concern over the amount of leverage and asked that LVI post a \$10 million letter of credit in its favor. That LC still is in place today (we would hope to have this credit support removed following the close of this transaction, which would free up revolver capacity). Part of the impetus to get a deal done soon is that Arch has not yet received LVI's audit (we can't deliver with a clean opinion) and accordingly has expressed concern about the situation. They are aware of the financial restructuring taking place and are acting patiently. It's not in their interest to do anything that would precipitate a downturn, but if this situation persists Arch's underwriting will likely change to narrow exposure and over time we will likely lose them.

We have reviewed public information on Arch and believe they are in solid financial shape, well capitalized and committed to the surety business. Notably, Arch recently hired a senior person from Liberty Mutual to head the surety business and in press releases described this as a growth business. LVI is arranging for us to speak to Arch directly next week. Given the importance of bonding and dependency on Arch, upon closing we intend source additional providers as quickly as possible. Because LVI deals with hazardous materials, obtaining bonding is not as straightforward as it might be for a general contractor. However management has begun discussions with Safeco (owned by Liberty Mutual) and believes it can obtain a line once the financial restructuring has taken place.

VI – CEO Search

In March 2010, in the midst of restructuring, Bob McNamara resigned to take become CEO of the Americas for Bovis Lend Lease. This is a big position and hopefully he will be helpful to LVI in this capacity. Fortunately, Burt Fried, Chairman and former CEO, was able to step-in as interim CEO and provide time for an orderly transition. CHS has taken the lead on the CEO search and, along with Burt Fried, has narrowed the list to four potential candidates through Heidrick & Struggles. We will meet with these candidates in the coming weeks. Our feeling though is that we will be able to recruit a talented CEO once the restructuring is completed. At present though, we are fortunate to have Burt Fried as interim CEO who has done a good job stabilizing the situation.

Name/Title/Company	Prior Experience/Education	Compensation
Adrian W. Jackman <i>Executive Vice President – International Operations</i> EMCOR Group, Inc.	1980 – MA– Cambridge University	Base: \$300K Bonus: 100%
Daniel K. Mazany <i>SVP Principal in Charge Healthcare Group</i> Bovis Land Lease	1987 – MBA – University of New Haven	Base: \$325K Bonus: 50%
John L. Hopkins <i>Group Executive, Fluor Environmental & Nuclear Operating Company</i>	1980 – BBA –University of Texas	Base: \$550K Bonus: 100%
Jim Bollweg <i>President CBI Services, Inc.</i>	1974 – BS – Western Michigan University	Base: \$400K Bonus: 40%

VII – Consolidated Historical Financial Summary and Management Projections

The chart below summarizes LVI's 2007-2009 historical financial performance as well as management's 5-year forecast. Remediation segment revenue is projected to improve (and return to 2003-2005 levels) due to economic improvement and a return to normalcy in commercial end markets. Demolition related revenue is projected to increase given the Company's recent penetration and focus on industrial, oil & gas and utility end markets and related decommissioning / deconstruction work. As of April 2010, the Company has a \$105 million backlog – a significant majority of which relates to demolition work and including \$27 million for the recently awarded abatement / demolition project for Madison Square Garden. Backlog trends have been improving and management feels confident that the Company has stabilized. To note, we have engaged a market consulting firm (FMI) to interview customers and competitors and provide a better sense of where we are in the cycle. We expect to have this report in the coming days.

The projected FCF below assumes \$3.75 million of earnout/other payments in each of 2011 and 2012 relating to payouts to management (relating to their pre-restructuring working capital claims - \$2 million assumed paid in 2011 and \$2 million assumed paid in 2012) and Mazzocchi-related payments (model assumes \$1.75 million each in both 2011 and 2012). For conservatism, we show credit stats assuming the \$8.5 million Mazzocchi seller note remains on LVI's balance sheet as debt.

SUMMARY HISTORICAL AND PROJECTED FINANCIALS

(\$ in millions)	2007A	2008A	2009A	2010E	2011E	2012E	2013E	2014E
Revenue Build								
Remediation	\$223.8	\$244.6	\$174.1	\$127.5	\$139.8	\$148.8	\$171.2	\$186.8
Demolition	129.5	108.5	76.4	126.6	144.7	159.1	175.0	192.5
Emergency Response	8.2	23.6	14.8	74.1	15.6	17.1	18.8	20.7
Total Revenue	\$361.5	\$376.7	\$265.3	\$268.2	\$300.1	\$325.0	\$365.0	\$400.0
% Growth	10.9%	4.2%	-29.6%	1.1%	11.9%	8.3%	12.3%	9.6%
Gross Profit (incl. D&A)	71.7	75.4	54.5	59.8	66.0	71.5	80.3	88.0
% Margin	19.8%	20.0%	20.5%	22.3%	22.0%	22.0%	22.0%	22.0%
SG&A	51.6	50.6	44.4	44.6	45.9	48.4	52.4	55.4
% of Total Revenue	14.3%	13.4%	16.7%	16.6%	15.3%	14.9%	14.4%	13.9%
Adj. EBITDA	\$34.3	\$35.1	\$20.4	\$24.0	\$26.1	\$28.5	\$33.8	\$38.1
% Margin	9.5%	9.3%	7.7%	8.9%	8.7%	8.8%	9.3%	9.5%
CapEx	4.4	4.2	4.1	4.1	3.8	3.8	4.6	5.0
% of Total Revenue								
Note - Total Backlog	\$138.5	\$120.1	\$89.3					

PROJECTED FCF AND CREDIT STATS (PF FOR RESTRUCTURING)

	6 mos. 2010	2011	2012	2013	2014
Free Cash Flow					
EBITDA	\$15.5	\$26.1	\$28.5	\$33.8	\$38.1
Earnout / Other Payments	0.0	(3.8)	(3.8)	0.0	0.0
Maintenance CapEx	(2.9)	(3.8)	(4.1)	(4.6)	(5.0)
Operating Lease Buyout	0.0	0.0	(1.8)	0.0	0.0
Taxes	(2.9)	(4.8)	(6.7)	(8.8)	(10.8)
Change in Working Capital	(0.3)	(1.3)	(3.7)	(5.4)	(5.2)
Subtotal - FCF	\$9.5	\$12.6	\$8.6	\$15.0	\$17.1
Management Fee	(0.2)	(0.4)	(0.4)	(0.4)	(0.4)
Cap. Lease Payments	(1.4)	(2.7)	(2.8)	(2.6)	(1.6)
Cash Interest	(4.6)	(7.4)	(6.6)	(6.4)	(6.2)
FCF for Debt Repayment	\$3.3	\$2.1	(\$1.2)	\$5.7	\$9.0
Net Senior Debt	\$81.3	\$76.5	\$74.9	\$66.7	\$56.2
Net Senior Debt / EBITDA	3.4x	2.9x	2.6x	2.0x	1.5x
Net Total Debt	\$89.8	\$85.0	\$83.4	\$75.2	\$64.7
Net Total Debt / EBITDA	3.7x	3.1x	2.9x	2.2x	1.7x

Quarterly Analysis and 2010 "Likely Case" Projection

Management believes that they have good momentum heading into H2 2010 -- including a \$105 million backlog as of April 30th which should drive near term earnings -- and is reluctant to revise downward the 2010 EBITDA estimate of \$24 million (although they acknowledge this will be difficult to achieve). This H2 forecast projects Q3 and Q4 revenue of \$80 million and \$75 million, respectively. Given our discussions with management of the assumptions contained in these quarterly forecasts, we believe a \$10 million revenue reduction in each of these two remaining quarters is warranted for a more "base case" estimate -- particularly given the underperformance vs. plan thus far in 2010 (our adjustment is effectively a run-rate of the underperformance). At approximately 20% gross margin and SG&A relatively fixed at \$11 million a quarter, this \$20 million cumulative revenue reduction through year end equates to a \$4 million reduction to 2010 EBITDA. At \$20 million of earnings, total leverage at year end (including the Mazzochi note) is estimated at 4.5x vs. management's plan of 3.7x and down from 5.1x estimated at closing. If we are successful in eliminating the Mazzochi note, total leverage would be approximately 4x.

It's important to note that LVI experiences some seasonality (primarily due to weather) with H2 stronger than H1. The business therefore faces relatively favorable comps in the back half of the year. We would be disappointed if we did not see EBITDA growth from June levels.

Quarterly EBITDA Analysis

	Q1	Q2	Q3	Q4	Total
2008A	4.3	9.5	11.1	10.2	\$35.1
2009A	5.5	6.0	4.1	4.8	\$20.4
2010E	3.7	4.8	8.2	7.4	\$24.0
Mgmt Case 2010 LTM EBITDA	\$18.6	\$17.4	\$21.5	\$24.0	
Projected Leverage at Year End					3.7x
AIC Base Case Assumptions					
Revenue "Risk" to 2010 Quarterly Periods		\$0.0	\$10.0	\$10.0	
EBITDA Impact (1)		0.0	2.0	2.0	
AIC Base Case 2010 LTM EBITDA	\$18.6	\$17.4	\$19.5	\$20.0	
Projected Leverage at Year End					4.5x

(1) Assumes 20% Gross Margin business; SG&A assumed relatively fixed (as per management guidance).

Assumed 3-year Exit with LTM EBITDA of \$35 million

IX- Summary Remarks

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The restructuring we've taken a lead in developing requires unanimous support and therefore almost by definition cannot be ideal for any group. Ultimately, we believe a \$10 million investment is warranted because it's in connection with implementing a permanent solution and provides AIC with a good shot at recouping a meaningful amount, if not all, of our total investment. The valuation we are investing at is reasonable, the debt load manageable and the new money economics are potentially 3-4x.

LVI has a long operating history and through this downturn we are effectively at revenue levels experienced 10 years ago. But today, LVI is a more diverse and professional business than it was then and has major opportunities in the energy market that it previously could not pursue (lacked relationships/expertise). As such, we expect it to recover to higher levels in the coming years. As this occurs, we will likely have opportunities to refinance the debt at less expensive rates. Improved performance will also enable an exit, which we believe might occur with a large strategic seeking a U.S. footprint or a niche remediation company with a solid reputation and track record. It could also occur with a private equity group, which could grow LVI both organically and through acquisitions – effectively the strategy LVI has been pursuing for two decades. The market is still highly fragmented and will consolidate over time.

This memo was intended to provide an overview of the situation and new money investment. We will keep the team posted on the restructuring process, performance and key findings from the FMI report. Please call any of us with questions.

Exhibit 18

From: Scott State <scott.state@gmail.com>
Sent: Tuesday, September 14, 2010 4:09 PM
To: Hogan, Robert <Rhogan@chsonline.com>
Cc: Simmons, Brian P. <BSimmons@chsonline.com>
Subject: Re: Burt/LVI Board

I think we can assume that Burt is essentially another Falcon vote on the Board. Long term, very close relationship there from what I have gathered.

The whole surety question is an interesting one. The LVI surety (Arch) is one of the smaller players in the market and not real active. Have done alot of surety work dealing with claims and litigation for third parties and not seen them in the game too much. They recently changed out their management and the new leader (David Finkelstein) came over from Liberty Mutual. I believe Burt has had a call with him to introduce himself. We will have to get on this quickly since Liberty is not really a player at all in the construction surety market and Finkelstein will be looking at what business he wants to keep. If Arch were to pull away I do feel confident we could put a new line in place with a number of other parties I have worked with.

On Tue, Sep 14, 2010 at 2:39 PM, Hogan, Robert <Rhogan@chsonline.com> wrote:

You are correct. I missed that in my earlier email. This was added by Falcon late in the negotiation process. They were concerned that the lack of a CEO and the future departure of Burt would be damaging to the business--in particular its relationship with the sureties. In addition, Falcon did not want the Chairmanship in the hands of one of the three key shareholders. Burt made sense as a "neutral" Chairman.

As long as the three key shareholders own at least 50% of what they owned immediately post-restructuring, we would need the unanimous vote of the three shareholders to replace Burt as Chairman.

In the end, you will run the business and report to the entire Board, not solely the Chairman.

Robert Hogan
Principal
Code Hennessy & Simmons LLC
10 S. Wacker Drive, Suite 3175
Chicago, IL 60606
(p) 312-876-2679
(f) 312-876-3854

From: Scott State [mailto:scott.state@gmail.com]
Sent: Tuesday, September 14, 2010 3:16 PM
To: Hogan, Robert
Cc: Simmons, Brian P.

Subject: Re: Burt/LVI Board

That is in 4.1 (a) (ii) I believe. In the Covenants section 5.1 (a) (v), I think it requires unanimous consent of the investors to remove him as Chairman of the Board. Am I missing something?

On Tue, Sep 14, 2010 at 2:05 PM, Hogan, Robert <Rhogan@chsonline.com> wrote:

The current Investor Securities Agreement stipulates that Burt will be on the board so long as he is employed by the Company. If he is no longer employed by the Company, he may remain on the Board or someone else may be elected to take his place with the vote of two of the three major shareholders.

Robert Hogan
Principal
Code Hennessy & Simmons LLC
10 S. Wacker Drive, Suite 3175
Chicago, IL 60606
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(f) 312-876-3854

Exhibit 19

From: Scott State <scott.state@gmail.com>
Sent: Sunday, September 19, 2010 8:48 PM
To: Hogan, Robert <Rhogan@chsonline.com>
Subject: Re: Offer

Rob

I offer the following proposal for modified terms to the offer of employment:

Salary / Bonus

The salary of \$400K is fine, bonus should be set with a 120% of plan threshold to achieve 100% bonus. I would like a simple set of objectives for 2010 tied to a "signing" bonus payable at year-end.

Safety Incentive

Concept is fine. Targets for 2011 need to be based on improvement from current performance. After 2011 the targets can be as stated in the original offer.

Equity / Options

I am not comfortable making an investment in the business at this point. In our discussion on Tuesday you had indicated that August performance appeared to be such that TTM EBITDA would bounce back towards \$18MM. On Friday it seems that may have been revised down to a roughly \$300K improvement in August 2010 vs. 2009 EBITDA. The August 2009 performance was about \$840K so a \$300K improvement on that would still be very low. I think the business continues to be under pressure and determination of FMV is difficult.

I would like to have a meaningful share of the upside created in the business. For me, that amounts to roughly 5% of the gain in value. We went over a concept that would provide a transaction bonus on sale that would reflect a drop in option strike price from the current value which is based on implied equity value. I think the approach is simple and meets my desire to have the ability to get my starting equity value to be reflective of what may be FMV at this point. I would like to make this simple and fair to all parties and would prefer to have just a typical option award mechanism as opposed to the multiple option / equity purchase provisions in the current offer.

Other

I believe that all other provisions of the offer are acceptable.

In addition to coming to terms on the financial parameters I would like to also get fully satisfied that the operational objectives of the business can be optimized. My view of LVI is that the business needs to be brought back to life and then some serious repositioning must take place. The old markets and ways of doing business will not put the Company where it needs to be a few years from now. We will need to make changes to the operating culture, find new markets, and develop a franchise that has attractive prospects if we are to exit this with a good outcome.

To be successful and move beyond what "has been" to what "can be" starts with leadership and a single vision. I have expressed my concern about having that singular focus and avoiding confusion within the team about who is in charge. I need to get to a meeting of the minds with Burt before making the leap on this opportunity. Burt has told me he plans to continue part-time with LVI pursuing opportunities in Dubai on over-water oil platform remediation. He is also actively pursuing hiring a CIO for the Company. These are two plans I would

not anticipate pursuing upon joining the team as being unrealistic and unnecessary respectively. I would like Burt's commitment not to challenge those decisions if they are made as this would likely result in an immediate division in the management team.

In the best-case scenario Burt will decide to retire at some date certain from LVI upon a new CEO being named and offer to support the business under a consulting agreement in any way the new CEO sees fit. Several members of the senior team have told me that Burt will never retire because he has no other interests and nothing else to do. That is not a healthy situation for Burt or LVI. If Burt wants to keep his oar in the water due to the additional \$4MM owed under the working capital adjustment from the prior deal then it will complicate matters.

I am optimistic that this is a business that can be positioned for long-term success. I am also willing to do the heavy lifting to achieve that goal. However, I prefer to enter into this commitment with a clear vision of goals and leadership. Upon agreement on the business terms of the offer I would like to have a meeting with Burt to establish our working relationship and then move to a conclusion.

I look forward to our upcoming discussion.

Best Regards,

Scott

On Fri, Sep 17, 2010 at 3:36 PM, Hogan, Robert <Rhogan@chsonline.com> wrote:
Haven't gotten final August numbers, but they expect to beat last year's EBITDA by at least \$300k.

Robert Hogan
Principal
Code Hennessy & Simmons LLC
10 S. Wacker Drive, Suite 3175
Chicago, IL 60606
(p) 312-876-2679
(f) 312-876-3854

From: Scott State [<mailto:scott.state@gmail.com>]
Sent: Friday, September 17, 2010 4:33 PM
To: Hogan, Robert
Subject: Re: Offer

Rob

Will get something off this weekend.

Have you received the August #'s yet?

Scott

On Fri, Sep 17, 2010 at 1:35 PM, Hogan, Robert <Rhogan@chsonline.com> wrote:
Scott,

I received your message. I am confident we can come to an agreement on a compensation

package for you that works for everyone and has you excited about leading LVI.

With that in mind, I think it will work best if you provide a specific counterproposal on the key topics.

We want to reach agreement with you as soon as possible. If we have the proposal from you this weekend, we can get on the phone with you this weekend or early Monday and hammer out a solution.

We look forward to hearing from you.

Have a good weekend.

Rob

Robert Hogan
Principal
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Exhibit 20



Contact:

Burton T. Fried
LVI Services
203-222-0584
bfried@lvisservices.com

Amy McGahan
Dix & Eaton
216-241-3027
amcgahan@dix-eaton.com

FOR IMMEDIATE RELEASE

LVI SERVICES NAMES SCOTT E. STATE AS PRESIDENT AND CEO

*Experienced executive with environmental background to drive
continued growth in new markets and geographies*

NEW YORK – September 27, 2010 – LVI Services Inc., the nation's largest remediation and facility services firm with more than 25 offices across the country, announced today that Scott E. State, P.E., has joined the company as President and Chief Executive Officer, effective immediately. Burton T. Fried, who was serving as interim CEO since earlier this year, will return to his primary role as Chairman and will continue to play an active role in supporting the company's expansion into new services areas and geographies.

"Scott State has extensive experience in leading and growing environmental- and construction-oriented companies," Fried said. "As a professional engineer, Scott has outstanding technical skills as well as an executive management background with large, complex organizations. His experience in development and financial advisory projects for the military, nuclear and private industry will enable Scott to make a significant contribution to the profitable growth of LVI."

Brian P. Simmons, a Partner with the private equity firm Code Hennessy & Simmons LLC, which has a major investment in LVI, said, "Scott State is a valuable addition to the LVI executive team. His combination of technical skills and executive experience will provide an immediate and lasting impact on LVI's client service, growth and financial strength. Burt, Scott and the overall management team are well positioned to take this company to the next level of performance."

As a consultant since 2002, State, 47, has led several development and financial advisory projects with clients seeking to buy or sell major assets or to re-capitalize their businesses. Engagements have included a \$120 million remediation of a 9,000-acre former military facility, technical program management consulting, and executive level support focused on cleaning up

former nuclear weapons and nuclear power plant sites. He has successfully completed projects in the U.S., Europe, Asia and Australia.

"The opportunity to serve LVI as its new CEO is an assignment that I am very excited about," State said. "My relationship with LVI goes back more than a decade and I have had a close working relationship with Burt Fried. I look forward to continued success in the traditional markets the Company has pursued and expansion in both new service areas and geographies."

State served as Chairman and CEO of MACTEC, Inc., a leader in engineering, environmental and construction services worldwide with 80 locations, from 1996 to 2002, directing and leading annual revenue growth from \$45 million to more than \$500 million. During his tenure, State executed a leveraged buyout of MACTEC from the company's ESOP, completed a second re-capitalization as the firm expanded, and successfully integrated nine acquisitions.

State holds bachelor's and master's degrees in Nuclear Engineering and a master's degree in Engineering Management, and is a licensed Nuclear Engineer. He formerly held an NRC Reactor Operators license, DOE "Q" clearance, and DoD Top Secret clearance.

State, a native of Iowa, is operating out of LVI's Denver and New York offices.

About LVI Services

LVI Services Inc. is the United States' leading provider of a wide array of integrated facility services, including environmental remediation, demolition, fireproofing and related services for commercial, industrial, multi-family residential and governmental facilities. LVI focuses on projects involving asbestos, lead paint, mold, infection control, hazardous materials, fireproofing, emergency and disaster services, and demolition. Founded in 1986, LVI has more than 25 offices across the United States, is licensed in every state, and is experienced in responding to natural and manmade disasters around the world. The company's annual revenues exceed \$250 million. For more information, visit www.lvisevices.com.